

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Criminal Action
)	No. 13-10200-GAO
)	
DZHOKHAR A. TSARNAEV, also)	
known as Jahar Tsarni,)	
)	
Defendant.)	
)	

BEFORE THE HONORABLE GEORGE A. O'TOOLE, JR.
UNITED STATES DISTRICT JUDGE

JURY TRIAL - DAY FIFTY-SIX

John J. Moakley United States Courthouse
Courtroom No. 9
One Courthouse Way
Boston, Massachusetts 02210
Wednesday, May 6, 2015
9:11 a.m.

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Cheryl Dahlstrom, RMR, CRR
Official Court Reporters
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One Courthouse Way, Room 3510
Boston, Massachusetts 02210
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4	<u>DEFENSE:</u>			
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P R O C E E D I N G S

THE COURT: Somebody said there was an issue before we brought the jury out.

MS. CLARKE: Yes.

THE COURT: All right.

(SIDEBAR CONFERENCE AS FOLLOWS:

MS. CLARKE: Judge, this is regarding the first witness. As you know from the pleadings and discussions about him coming to the United States, he was convicted of misdemeanor assault; a protection order violation was dismissed; and there have been some allegations, never confirmed, to my knowledge, in any kind of a pleading or writing or document or complaint, about parental kidnapping, you know, sort of a concern about him keeping the child of Ailina and him in Kazakhstan and not returning the child.

I've talked to Mr. Chakravarty, who's doing the cross-examination of this witness, and he has acknowledged that they will not seek to use it to impeach -- any of those allegations to impeach the witness. But Mr. Chakravarty believes that it will be evidence of bias if the witness testifies to the family being essentially crazy and manipulative. I guess you can probably speak to that.

MR. CHAKRAVARTY: A disgruntled in-law who blames the mother-in-law for breaking up his marriage and for a host of, I guess, threatening and other types of behavior.

1 MR. WEINREB: I don't think that quite conveys it. He
2 is part of the Ruslan branch of the family. He's Ruslan's
3 brother-in-law.

4 THE COURT: Meaning Ruslan's wife's brother?

5 MS. CLARKE: Exactly.

6 MR. WEINREB: Ruslan's wife's brother married Ailina
7 Tsarnaev. She then believed that he was cheating on her. She
8 accused him of it. He hit her. She divorced him. Ruslan --
9 and there's a -- and Ruslan and that side of the family blamed
00:12 10 Ailina and particularly Zubeidat for false -- falsely accusing
11 him, the marriage, for besmirching his name. And it created a
12 huge rift between Anzor and his relatives on the one hand and
13 Zubeidat and her relatives on the other.

14 He is going to talk about how Zubeidat and her
15 children or her side of the family are dysfunctional and are
16 crazy and so on. They're going to have no idea why he might
17 feel so passionately.

18 MS. CLARKE: Let me clarify this. The purpose of his
19 testimony is not to talk about the dysfunction of the Tsarnaev
00:12 20 family. He will talk about her -- Zubeidat with her son
21 Tamerlan, her relationship. He observed it in the family home.
22 He's not going to drag in the nastiness of the divorce. It's
23 not very relevant to the testimony.

24 MR. WEINREB: Ruslan hated Zubeidat. They think she's
25 a witch. They think all -- everything that's gone wrong in the

1 family is all Zubeidat's fault going back to the day she met
2 Anzor. And Tamerlan -- without making it relevant what the
3 source of his extreme animus towards them might be.

4 MS. CLARKE: Well, this is not Ruslan. This is
5 Elmirza.

6 MR. WEINREB: His brother-in-law. The rift occurred
7 because of Elmirza.

8 THE COURT: I think some of it may well be in play. I
9 guess I'll have to hear what his direct is like. But if it can
00:12 10 be shown that he harbors a possibly skewing bias, that's
11 something the jury should hear about.

12 MS. CLARKE: The skewed bias will be against his wife,
13 not brother --

14 MR. WEINREB: That's not true. They all blame
15 Zubeidat.

16 MS. CLARKE: Could we have a proffer as to what it is
17 that the prosecution would elicit?

18 THE COURT: I think we did.

19 MR. WEINREB: The whole story of how he came to blame
00:12 20 Zubeidat for the destruction of his marriage and for his --

21 MS. CLARKE: He's not going to testify about that.

22 MR. WEINREB: But he's going to testify about
23 Zubeidat.

24 MS. CLARKE: He's going to testify about his
25 observations.

1 MR. WEINREB: And yet he blames Zubeidat for the
2 destruction of his marriage.

3 MS. CLARKE: But he's not going --

4 MR. WEINREB: But he has a bias against her.

5 THE COURT: I think it may depend on where he goes on
6 direct, but I can conceive of it being appropriate
7 cross-examination to expose a bias, but --

8 MS. CLARKE: All right. Then what I'm aware of is a
9 misdemeanor assault conviction, a dismissed protection order,
00:12 10 and some sort of, in the ether, allegations of parental
11 kidnapping. Now, if we could have a proffer as to the
12 underlying basis for that, that would be nice to know before I
13 go through this direct.

14 THE COURT: Are you going to get into kidnapping?

15 MR. CHAKRAVARTY: The fact that he was deprived of his
16 son by Zubeidat for years until, finally, with the assistance
17 of the defendant, the son was brought to Ruslan's family and
18 then ultimately brought over to Kazakhstan where now the son
19 has resided with the witness. Ailina, the wife, mother of the
00:12 20 child, claimed to the FBI that he had essentially parentally
21 kidnapped --

22 THE COURT: I'm not sure that --

23 MR. CHAKRAVARTY: It goes both ways. One, he blames
24 Zubeidat for keeping as essentially ransom his son from him for
25 a long time, further fomenting the dislike, the hatred, of the

1 Tsarnaev family. And then after he then gets custody of his
2 son --

3 THE COURT: We're talking about his bias, not other
4 people's bias towards him.

5 MR. CHAKRAVARTY: Correct. But it's his bias toward
6 the family. It took everything in his power and his uncle's
7 power to be able to extract his son from the clutches of this
8 family.

9 MR. WEINREB: He's biased against Zubeidat because he
00:12 10 sees her as having kept his child from him and evidence --

11 THE COURT: But he has the child.

12 MR. WEINREB: He has the child now but after years of
13 being deprived.

14 THE COURT: Tell me about the keeping.

15 MR. WEINREB: Well, the keeping is because he feels
16 that it was -- the child was unfairly kept from him.

17 THE COURT: No. That's what -- how was the child
18 unfairly kept from him?

19 MR. CHAKRAVARTY: He wanted the child when he went
00:12 20 back to Kazakhstan. Zubeidat gave him an ultimatum,
21 essentially saying, If you don't come back to the marriage and
22 stay married to my daughter, then you're not getting back this
23 child.

24 THE COURT: Kidnapping is an inflammatory concept. It
25 could be less inflammatory if it's a child custody dispute.

1 And you can talk about it generally that there's a custody --

2 MR. WEINREB: We could avoid the term "kidnapping."

3 That's not the point here. We just want the jury to understand
4 the story of the history.

5 THE COURT: If there's animus that he would testify to
6 between him and Zubeidat or Ailina -- is it Ailina?

7 MR. WEINREB: Ailina.

8 THE COURT: -- the animosity could be shown, but it
9 should be done in a non-inflammatory way. Kidnapping is not a
00:12 10 way to talk about it. A child custody dispute that might be
11 going on may be fair game.

12 MS. CLARKE: The child was going to return to Boston,
13 but the bombing occurred and the father, I think rather
14 rightfully, held onto the child until things could --

15 THE COURT: Well --

16 MR. CHAKRAVARTY: There's another component which is
17 best to flag now before we start, is after this -- the break-up
18 between Ailina --

19 THE COURT: Which was when, by the way?

00:12 20 MR. CHAKRAVARTY: It was 2008 that he went back to
21 Kazakhstan. He then returned in 2009 and then again in 2011 to
22 see his son.

23 MS. CLARKE: He finished his education here, too.

24 MR. CHAKRAVARTY: He continued his education. I don't
25 know that he actually finished it. He continued it. He went

1 back. He was on an F1 visa. But he maintained contact with
2 Zubeidat during all of this time, and she continued to provide
3 him information, continued often to lambast him when she would
4 hear a rumor about all the things that he and his family were
5 accusing -- typical bad break-up relationship -- accusing
6 Ailina of besmirching his character, explaining the reasons for
7 the break-up was something other than what the -- at least he
8 would say it was -- and then threatened him and his family to
9 say, If you continue doing this kind of talking about our
00:12 10 family like this, we'll scourge you to earth. We will tar you
11 on the internet. We will send people out to harass you. We
12 will make -- the idea of this Hatfields and McCoys type of
13 scenario.

14 THE COURT: I don't want to try a Hatfield and McCoy
15 case here.

16 MR. WEINREB: But the jury is going to be asked.

17 THE COURT: The point can be made, but let's not
18 overdo it.

19 MS. CLARKE: I also don't want the prosecution to
00:12 20 raise these issues that I'm not raising so that they can shoot
21 them down.

22 MR. WEINREB: Your Honor, by asking him about
23 Zubeidat, they're raised. There's no other way around it. He
24 harbors tremendous animus for Zubeidat, as does his
25 father-in-law.

1 THE COURT: Is he going to be testifying --

2 MR. WEINREB: He's going to be testifying about her
3 and her dysfunction and her relationship with Tamerlan. It's
4 only being offered because the defense thinks it reflects
5 poorly on --

6 THE COURT: Okay.

7 . . . END OF SIDEBAR CONFERENCE.)

8 MS. CLARKE: Your Honor, I believe that the video
9 witness is the first witness, so do we need to adjust the
00:12 10 screens?

11 THE COURT: When the jury is in the box, we'll do
12 that.

13 MR. WEINREB: Your Honor, I just wanted to add one
14 last thing, which is, the Court has said that there would be an
15 instruction to the jury about the unusual circumstances in
16 which this --

17 THE COURT: What did you want me to say?

18 MR. WEINREB: That it's not under oath, for example.

19 THE COURT: We will administer an oath.

00:13 20 MR. WEINREB: But it's not an enforceable oath.

21 MS. CLARKE: He's on U.S. -- he's at the consulate.
22 This is mostly of the making of the government that he's having
23 to come in by video.

24 MR. WEINREB: Well, we would dispute that.

25 THE COURT: But specifically?

1 MR. WEINREB: We were under the understanding the
2 Court was going to instruct the jury that he's not under the
3 pains and penalties of perjury because he's not in this country
4 and can't be prosecuted for it if he perjures himself. There's
5 no way to enforce the oath. It's just a -- it's just a moral
6 suasion, but there's no legal --

7 THE COURT: Well --

8 MR. WEINREB: -- consequences for him.

9 MS. CLARKE: We object to any admonition that would
00:14 10 diminish the quality of his testimony.

11 THE COURT: I'm not going to do it at the beginning,
12 but I may do it at some point.

13 MR. WEINREB: Very well.

14 MS. CLARKE: Your Honor, would the Court give us an
15 opportunity to be heard before any instruction is given?

16 THE COURT: All right.

17 (The jury entered the room at 9:25 a.m.)

18 THE COURT: Good morning, jurors. Jurors, we're going
19 to begin this morning with a witness who will be testifying via
00:15 20 remote connection. The witness is in Almaty, Kazakhstan. We
21 have a video connection. And the examination of the witness
22 will be typical in many ways, but it will be by remote
23 connection.

24 You will actually see it on your own monitors. If an
25 exhibit is shown, you will see the exhibit on your monitors;

1 and when that happens, you won't see the witness for the time
2 being. We can't do both. But the witness will continue to be
3 on this monitor, and we're going to move that into position.
4 Phil will do it. That's what we pay him for.

5 MS. CLARKE: There you go.

6 THE COURT: Can the jurors -- I remind you that the --
7 you'll rarely have to do it because you'll have the video of
8 the witness on your monitors. It's only when you have an
9 exhibit; and if you wanted to look and see the witness when
00:17 10 you're looking at the exhibit, that would be it. I think
11 that's the best we can do.

12 THE CLERK: Sir, will you please raise your right
13 hand. Please raise your right hand. Do you solemnly swear or
14 affirm under the pains and penalties of perjury that the
15 testimony that you're about to give the Court and jury in this
16 issue now on trial shall be the truth, the whole truth, and
17 nothing but the truth?

18 He's not hearing me.

19 THE WITNESS: Can you hear me?

00:18 20 THE CLERK: Yes. Can you hear me? Can you hear the
21 Court?

22 THE WITNESS: Can you hear me now?

23 THE CLERK: Yes. Can you hear the Court?

24 THE WITNESS: I heard what you said.

25 THE CLERK: You want me to repeat it?

1 THE COURT: Yes, repeat it.

2 THE WITNESS: Yes, please.

3 THE CLERK: Do you solemnly swear or affirm under the
4 pains and penalties of perjury that the testimony you're about
5 to give the Court and the jury in this issue now on trial shall
6 be the truth, the whole truth, and nothing but the truth?

7 THE WITNESS: I swear.

8 THE CLERK: Please state your name and spell your
9 first and last name for the record.

00:19 10 THE WITNESS: My name is Elmirza Khozhugov. It's
11 E-l-m-i-r-z-a. Last name is K-h-o-z-h-u-g-o-v.

12 DIRECT EXAMINATION BY MS. CLARKE:

13 Q. Good evening, Elmirza. Can you see me?

14 A. Hello.

15 Q. Good evening. It's about 7:30 p.m. over there?

16 A. About that time, yes.

17 Q. Where are you testifying from?

18 A. I'm testifying from Almaty, Kazakhstan.

19 Q. In what physical location are you?

00:20 20 A. I'm in the U.S. Embassy in Almaty.

21 Q. Do you live in Almaty?

22 A. Yes, I do live in Almaty.

23 Q. Were you raised in Almaty, or in Kazakhstan?

24 A. I was raised in Almaty, Kazakhstan, yes.

25 Q. Do you have employment? Do you work there?

1 A. Yes, I do work here now.

2 Q. And do you have a family?

3 A. I have family here, wife and four children.

4 Q. What is it that you do for a living?

5 A. I work in a construction company that belongs to my
6 father.

7 Q. Can you tell us just a little bit about that?

8 A. In our company, I'm responsible for supply chain
9 management and for construction materials.

00:21 10 Q. And it's a family business?

11 A. Yes, it is a family business.

12 Q. I notice that you speak English very well. How is that?

13 A. Thank you. I spent a lot of time studying in the United
14 States.

15 Q. When did you first come to the United States?

16 A. Can you repeat the question?

17 Q. Yes. When did you first come to the United States? How
18 old were you?

19 A. First time I went to the U.S., I was 14 years old, and I
00:21 20 spent five months in the U.S., in Maryland.

21 Q. And then did you return to the United States for more
22 education?

23 A. And then I went to college in the United States in 2004.

24 Q. Where was that that you went to college?

25 A. It's in Washington State, Western Washington University.

1 Q. Thank you. You have -- can you tell the jury your -- they
2 can see you on a screen in front of them. Can you tell the
3 jury your connection to the Tsarnaev family?

4 A. I am connected to the Tsarnaev family because I was
5 married to Ailina Tsarnaeva, the sister of Jahar.

6 Q. Do you have other relationships --

7 A. And also my elder sister is married to Ruslan Tsarni, who
8 is a cousin -- I'm sorry, who is an uncle on the father's side
9 for Jahar.

00:22 10 Q. Do you and Ailina have a son together?

11 A. Yes, we have a son together. His name is Ziyaudi.

12 Q. If you know, when did your sister marry Ruslan, Ruslan who
13 is Jahar's uncle?

14 A. They got married in December of 1999.

15 Q. And how old were you then?

16 A. I was 13 years old.

17 Q. When did you first meet members of the Tsarnaev family?

18 A. One of the members, the mother of Jahar and Tamerlan, I
19 met on the wedding; and the rest of the family, I met about six
00:23 20 to nine months after the wedding.

21 Q. I notice that you refer to Ruslan as Ruslan Tsarni, and
22 I'm referring to the Tsarnaev family. Can you tell the jury
23 the difference between the name Tsarnaev and Tsarni?

24 A. The difference is that Ruslan has decided to de-Russify
25 his last name, basically take out the two last letters of his

1 last name to make it sound more Chechen rather than more
2 Russian.

3 Q. So Tsarnaev is the Russian version of Tsarni?

4 A. Yes.

5 Q. In your --

6 A. That's right.

7 Q. In your younger years, you said you first met the rest of
8 the Tsarnaev family after Ruslan and your sister got married.

9 Did you know one member of the Tsarnaev family better than the
00:24 10 others in those years?

11 A. Yes. I knew Tamerlan Tsarnaev much better than the rest
12 of the family because he was my friend.

13 Q. And why was it that you got to know Tamerlan better?

14 A. When he first came to Almaty, Kazakhstan, he was
15 introduced to me by Ruslan Tsarni. And we were the same age,
16 and we had a lot of interests, a lot of things that interested
17 both of us. So we spent a lot of time together. And I
18 introduced him to my friends and to my neighbors, my
19 classmates, and he has become friends with them as well.

00:25 20 Q. Was there a time when Tamerlan stayed behind and lived
21 with your family, stayed in Kazakhstan?

22 A. There was a time when Tamerlan stayed at Ruslan's place
23 for about one year.

24 Q. And do you remember --

25 A. Before he went to the United States.

1 Q. Okay. So he stayed there for about a year before he came
2 to the United States?

3 A. Yes.

4 Q. Were you aware of who came -- who in the family came to
5 the United States first?

6 A. The mother, Zubeidat, and the father, Anzor, and the
7 younger son, Jahar, they came to the U.S. first.

8 Q. And did the other three children stay in Almaty?

9 A. The other -- the other three children at that time lived
00:26 10 with Ruslan Tsarni in Almaty, and they lived to the U.S. a year
11 after the parents and Jahar did.

12 Q. So that year that you spent with Tamerlan, can you
13 describe him for the jury?

14 A. Yes. Tamerlan was an interesting young man, polite, and
15 good friend. He was charismatic, friendly, goofy sometimes,
16 but, overall, he was just fun to be around with.

17 Q. And how did your friends interact with him?

18 A. My friends love him when he was around. And there were
19 even times when I wasn't called to the party and he was.

00:27 20 Q. After he left and came to the United States, I think that
21 was -- we've heard evidence that that was in about 2003. Did
22 you come to the United States soon after that?

23 A. I came to the U.S. in 2004, so about a year after -- a
24 year and a half after they moved.

25 Q. When you came to the U.S., where did you live and who did

1 you live with?

2 A. I lived in Ferndale, Washington, in the house that Ruslan
3 Tsarni has bought a little while before that.

4 Q. When you were -- yes. I'm sorry.

5 A. And I lived there alone because --

6 Q. You were going to school?

7 A. I lived there alone.

8 Q. While you went to school?

9 A. Yes. I went to school and live in their house.

00:28 10 Q. When you lived in Washington State, attending school in
11 that first year, did you see the Tsarnaev family, any members
12 of the Tsarnaev family?

13 A. In the first academic year that I went to college there,
14 the family did visit me and, actually, not just the elder
15 Tsarnaev family but also Ruslan Tsarni, along with my sister
16 and their children came over. Maret Tsarnaev came over, who is
17 an aunt to Jahar. And also Zubeidat, Bella, and Ailina
18 Tsarnaev came over.

19 Q. It sounds like the women came with Ruslan to visit?

00:28 20 A. They came separately but at the same time.

21 Q. I'm going to show you a picture. It's marked on your
22 stack 3507-60. It should be the first one on your stack
23 depending on how they were provided.

24 THE COURT: Let me just ask the government whether
25 you've seen the photographs. Will there be any objection to

1 these photographs?

2 MR. CHAKRAVARTY: All the photographs we were shown
3 last night, there is no objection.

4 Q. You have the one -- it's marked on the side 3507-060.
5 It's with you sitting on a couch with -- have you got it?

6 A. Yes, I do have it.

7 MS. CLARKE: I'd like to pull up 3507-60, or I can
8 pull it up, I guess.

9 Q. Elmirza, the jury is now seeing the photograph that you've
00:30 10 got in front of you. Can you tell us who that is in that
11 photograph and when it was taken?

12 A. On that picture, you can see myself hugging Zubeidat
13 Tsarnaeva, the mother of Jahar. On the side there is Naina
14 Tsarni, the daughter of Ruslan -- the eldest daughter of
15 Ruslan.

16 Q. The eldest daughter?

17 A. Yeah.

18 Q. Was this in that first visit that they made to Washington
19 State during your first year of school?

00:30 20 A. Yes. That's the first visit they made in the first year
21 of my school.

22 Q. Had you met Zubeidat before then? That was the first time
23 you met her?

24 A. This isn't the first time I met her, but it's the first
25 time I met her in the United States.

1 Q. Because you had met her at the wedding of your sister?

2 A. I met her at the wedding, yes.

3 MS. CLARKE: And I think it's clear --

4 THE COURT: Tell me when you don't want the picture
5 anymore.

6 MS. CLARKE: I think it's clear -- I'm going to -- I
7 think it's pretty clear we've got a child and two adults in the
8 picture, and one is Zubeidat and one is Elmirza and one is the
9 child. So I think we can move on from that picture.

00:31 10 Q. During that trip, did you get to know Ailina better?

11 A. During that trip, we have all met again, I would say. And
12 during that stay, I have become interested in Ailina, and we
13 started having sort of dates.

14 Q. You would go out?

15 A. Yes, we would go out.

16 Q. I'm going to show you another picture around that time
17 frame, 3494.

18 MS. CLARKE: I think there's no objection.

19 A. 3494.

00:32 20 Q. That's the picture of the family together. Can you see
21 where I'm talking about?

22 A. Uh-huh.

23 Q. Can you tell the jury who is in that picture from left to
24 right?

25 A. On the far left, it's Hussein, the cousin of Jahar, and he

1 is son of Alvi Tsarnaev, the eldest son in the family.

2 Q. I see there's --

3 A. And second one is Tamerlan Tsarnaev, the elder brother of
4 Jahar. Third on the left is Andy Tsarnaev and son of Alvi, the
5 cousin of Jahar. When I said Hussein -- I meant Hussein is the
6 son of Molkan, the sister of Ruslan Tsarni. Next on the
7 picture is Bella Tsarnaeva, the elder sister of Jahar. Then it
8 goes the mother of Jahar, Zubeidat. Then there's Jahar
9 himself. And on the far right is Ailina Tsarnaeva, Jahar's
00:33 10 sister and my ex-wife.

11 Q. Looking at the picture of Ailina and Zubeidat and Bella,
12 is that picture taken at around the same time of that visit to
13 your house in Washington? It's not taken in Washington State?

14 A. Judging by the clothing they're wearing, I can tell that
15 this picture was taken after they visited us in Washington
16 because some of the clothing that Ailina is wearing is the one
17 that she actually bought -- she actually got in Washington, and
18 I was there when she was buying it.

19 Q. Thank you.

00:34 20 MS. CLARKE: I think we can take the picture down.

21 Q. Did anybody else from the Tsarnaev family come to visit
22 you in that first year of your college in Washington State?

23 A. Yes. After they left and I think about five to six months
24 passed -- so it was my second academic year -- that's when
25 Tamerlan visited me.

1 Q. What was that visit like?

2 A. Can you repeat the question?

3 Q. Yes. What was that visit like? Can you tell us about
4 that visit?

5 A. Oh, yes. Tamerlan flew in because he had a break from
6 school, and I had a short break as well. And we just spent
7 time together. I showed him my college. I showed him where I
8 lived. I showed him the area, the lakes around, the mountains
9 around, and the -- I was trying to convince him to move to
00:35 10 Washington so that, first of all, we could be closer as a
11 family. I was trying to convince him and the rest of the
12 family to move but him first. And then as well I wanted him to
13 go to the same college as I did, so I was trying to convince
14 him that it's going to be a good idea to go.

15 Q. What was Tamerlan's response to that?

16 A. Tamerlan felt like it's a good idea. He did consider it,
17 and he did say that he would discuss it with his parents when
18 he goes back.

19 Q. And did Tamerlan end up moving to Washington State with
00:36 20 you?

21 A. No, he did not.

22 Q. Did you -- when Tamerlan was out there visiting with you,
23 did you talk to him about anything else that was important to
24 you?

25 A. Yes. As I was driving him back to the airport when he was

1 leaving, I asked him that -- I told him that I had feelings to
2 his sister, and I asked him if he would mind if I was -- if I
3 would have a relationship with her, to which he answered, as
4 long as it has good intentions, he wouldn't mind it.

5 Q. So he gave his permission for you to go out with his
6 sister?

7 A. Yes.

8 Q. Were you asking --

9 A. That is correct.

00:37 10 Q. Were you thinking of marriage at that time?

11 A. Excuse me?

12 Q. Were you thinking of marriage at that time?

13 A. At that time exactly, probably not. It was -- in
14 perspective, yes, maybe, but for that, it was just talking
15 relationship.

16 Q. Can you tell us what the age difference was between you
17 and Ailina?

18 A. We were four years -- I'm four years older than her.

19 Q. So you were 19; she would have been 15, almost 16?

00:37 20 A. She was 15, yes.

21 Q. Would you consider yourself close with Tamerlan during
22 that period of time that you were in college in Washington
23 State?

24 A. Do I consider myself what exactly?

25 Q. Did you consider you had a close relationship with

1 Tamerlan during that period of time?

2 A. Oh, yes, yes. Tamerlan was my only friend in the U.S. at
3 that time, and he was also my friend from my home country. So
4 we shared a lot of things in common.

5 MS. CLARKE: I'd like to pull up, your Honor, 3495.

6 Q. Elmirza, you'll recognize it's you and Tamerlan.

7 A. Yes. On that picture, it's Tamerlan on the left and me on
8 the right.

9 Q. How did that picture come about?

00:38 10 A. Well, since we were communicating mostly through emails,
11 we were sending pictures of each other to each other. And one
12 day I just felt like it would be a good thing to have a picture
13 together and since at that point in time we didn't meet yet.
14 So I took two photographs, and I added them to each other on my
15 computer, and I emailed it back to him.

16 Q. Can you tell the jury what is written at the top of the
17 picture?

18 A. On the top of that -- of this picture is mine and his
19 nicknames we had at that time. For him, it goes "the
00:39 20 professor," and for me it's "the Chechenian."

21 Q. How did --

22 A. Given that -- huh?

23 Q. I'm sorry. Go ahead.

24 A. Given our age, we were having -- we were giving ourselves
25 nicknames as what we would like to be identified with, what we

1 would like to be called. Tamerlan chose for himself the
2 professor because that would make him sound smarter and wiser
3 than others around him. And my nickname is the Chechenian, and
4 I chose that because I felt like our ethnicity, the name of our
5 ethnicity, is usually mispronounced as Chechens. So the right
6 way would be Chechenian, so that's why I had the nickname.

7 Q. Did you and Ailina eventually get married?

8 MS. CLARKE: We're finished with that picture.

9 Q. Did you and Ailina eventually get married?

00:40 10 A. Yes, we did, in July of 2006.

11 Q. Where did you get married?

12 A. We got married in Almaty, Kazakhstan.

13 Q. How old were you and how old was she?

14 A. I was 20 years old and she was 16 years old.

15 Q. I'm going to show you a photograph of the two of you,
16 3507-059. You see the one of you and --

17 A. Uh-huh.

18 MS. CLARKE: If we could bring that up.

19 Q. Can you tell the jury who is in that photo even though

00:41 20 I've already said it?

21 A. Well, it's me and Ailina. And this picture was taken in
22 Washington, in the Bellevue Square Mall in Washington, and at
23 that point in time, we are already married.

24 Q. How did you -- how do you remember that you were already
25 married with that picture?

1 A. I can tell because I am hugging her on that photograph.

2 Q. And you would not have been hugging her before that time?

3 A. And if I wasn't married to her, I wouldn't be hugging her,
4 exactly.

5 Q. How long did --

6 A. Because that would be inappropriate thing to do before
7 marriage.

8 Q. How long did the marriage last?

9 A. The marriage lasted for almost two years.

00:42 10 Q. Was there -- did there come a time that there was a
11 problem in the marriage involving you striking Ailina?

12 A. Yes, there has been that.

13 Q. Can you tell the jury a little bit about what happened?

14 THE COURT: You still want the exhibit up, or do you
15 want the witness?

16 MS. CLARKE: The witness.

17 A. Yes. We had an argument considering some contacts that I
18 found in her Facebook account. So because of that, I lost my
19 temper and basically put my hands on her.

00:42 20 Q. And what happened as a result of that?

21 A. As a result of that, I got arrested.

22 Q. Who --

23 A. And eventually we got divorced. We got separated.

24 Q. Separated. Who came and bailed you out of jail?

25 A. Her elder brother Tamerlan came over. He bailed me out

1 and flew in, and he stayed with us for about ten days, maybe
2 two weeks.

3 Q. Did he seem to understand the problems that you guys had
4 in your marriage?

5 A. He did talk to me during his stay, and he tried to advise
6 me to be more patient, to stay calm, and to not pay too much
7 attention if the young sister of his is behaving badly. So he
8 was trying to help, yes. That's what I'm trying to say.

9 Q. Can you tell the jury why you think you had problems in
00:44 10 your marriage? Was it your youth? Was it not understanding
11 marriage? What was it?

12 A. Well, partially, it was because we both were young, and
13 part of it was our family who got in between our relationship.

14 Q. Did you and Ailina have children together?

15 A. Yes, we had one child, a son.

16 Q. And his name is?

17 A. His name is Ziyaudi.

18 Q. Can you spell that for us?

19 A. Z-i-y-a-u-d-i.

00:44 20 Q. And do you have --

21 A. Ziyaudi.

22 Q. And do you have a nickname for Ziyaudi?

23 A. We call him Zia.

24 Q. During the two years that you were married to Ailina,
25 which I'm taking as 2006 to 2008, did you have -- you were in

1 Washington State?

2 A. During 2006 and 2008?

3 Q. Yes.

4 A. Yes, we were in Washington State.

5 Q. Did you visit the Tsarnaev home in Cambridge?

6 A. Yes, every spring -- every break we had, spring break,
7 fall break, we would go there. Either she would go up first
8 and then I would join or we would go there together.

9 Q. So what do you think, six or eight times over the two-year
00:45 10 period of time you were in the Tsarnaev home in Boston -- or in
11 Cambridge?

12 A. During these two years, I visit them for about four to six
13 times.

14 Q. For how long a period of time?

15 A. Every time it was about ten to fourteen days.

16 Q. Can you describe the Tsarnaev home for the jury, the home
17 that you saw during that period of time?

18 A. They lived in 410 Norfolk Street in Cambridge, and it's
19 basically -- it was basically a floor of a house, the third
00:46 20 floor of a house, very old house. And they had two bedrooms
21 there, a kitchen, and a small living room.

22 Q. How --

23 A. And it was a small place to live in. It was always
24 crowded.

25 Q. Let me ask you about members of the family. What did you

1 observe about the relationship between Anzor, Jahar's father,
2 and Zubeidat, Jahar's mother?

3 A. The relationship between the parents wasn't an example
4 one, I would say. It was obvious that neither of them wanted
5 to give in, so they had a lot of conflict. They had a lot of
6 arguments and conflicts coming out of those arguments. And for
7 the most part, I would say that the mother, Zubeidat, had more
8 authority in the family than the father did.

9 Q. What about the relationship between Zubeidat and Tamerlan,
00:47 10 can you describe it to us?

11 A. Zubeidat loved her son and she showed it, and she would
12 always praise him and encourage him to do things that he wanted
13 to do actually. And in return, Tamerlan loved his mother very
14 much. He respected her, and he would listen to her more than
15 to anyone else in the family or out of the family.

16 MS. CLARKE: Let me pull up Photograph 3507-047.

17 Q. That's a photograph you should have, 3507-047. Can you
18 tell us who's in that photograph?

19 A. It's Zubeidat on the left and Tamerlan on the right.

00:48 20 Q. Now, how old do you think Tamerlan was then?

21 A. He's probably around 13, 16 years.

22 Q. Is that photograph --

23 A. I'm not --

24 Q. You don't know for sure?

25 A. No, not for sure.

1 Q. Is that photograph reflective of the kind of close
2 relationship they had when you knew them together?

3 A. Yes, it is reflective. Tamerlan is hugging his mother on
4 that picture, and he would hug her every day. A few times he
5 would just come up and hug his mother and tell her that he
6 loves her, and he's showing that he defending her maybe.

7 Q. Now, when you were in the home, did you also see Jahar?

8 A. Yes, I have seen Jahar.

9 Q. So 2006 to 2008, Jahar would have been 13, 14, 15 years
00:50 10 old, in middle school. Can you describe what he was like so
11 the jury can know?

12 A. At the time when I was visiting the family, I would see
13 Jahar every time I was there. So for the most time that he was
14 in the house, he would spend his time studying. He would have
15 his textbooks out on the table. He would be reading or
16 writing. He wasn't very interested, I'd say, in the computer.
17 He was spending a lot of time with books. And the mother would
18 put up his good grades, and she would put it on a magnet on the
19 fridge so the whole fridge was his successful grades and all
00:50 20 that stuff.

21 Q. Was Jahar a quiet kid, a loud kid? Was he the center of
22 attention or --

23 A. He was really quiet, quiet and, again, polite, just as
24 Tamerlan was at that age. And he was patient and he studied
25 well. He spent -- he was responsible for whatever he did. He

1 never -- I have never seen him or heard of him being in any
2 inappropriate situation, I would say.

3 Q. When you were visiting the Tsarnaev home during this time
4 period, did you meet somebody there who was speaking to the
5 family about religion?

6 A. The last -- one of the last visits that I made is when I
7 met a friend of Tamerlan or, like, a mentor. His name was
8 Misha. And he was an Armenian guy who converted to Islam, and
9 he was pretty much just preaching to Tamerlan about Islam.

00:52 10 Q. What kind of things did you hear Misha -- I'm going to
11 spell that. M-i-s-h-a, is that correct?

12 A. Yes, that is correct.

13 Q. What kinds of things did you hear Misha talking to
14 Tamerlan about?

15 A. They would talk about politics; again, religion, and
16 concerning religion itself, they would discuss things like
17 hearing demons talk and talking to demons, and to jins, is what
18 they called in Islam. Misha was telling in cases it was
19 possible to hear the jins and in which cases it was not
00:53 20 possible.

21 Q. So he was giving him lessons in Islam, lessons --

22 A. I wouldn't call it formally a lesson, but he was teaching
23 him and suggesting books to read, I guess, and just kind of
24 expressing his own views about that faith to Tamerlan.

25 Q. Did anybody else in the family listen to or participate in

1 the conversations with Misha?

2 A. No one actually participated in those conversations. They
3 were usually left alone. And even I, when I was a guest there,
4 I didn't spend much time with them because I didn't like these
5 conversations. But Misha was welcome by the mother, by
6 Zubeidat, to come in any time to talk to Tamerlan. And there
7 was even one situation when it was late night, and Misha and
8 Tamerlan were in the kitchen talking about religion again.

9 And at that late time, Anzor came home from work, and he
00:54 10 had to get to the shower. And he -- to get to the shower, he
11 would have to go through the kitchen. And Zubeidat stop him in
12 the hallway and said, Don't go in there. You're going to
13 interrupt them talking. And Anzor would say, Why is he so late
14 at night? I think it was, like, 2 or 3 a.m. Why is he so late
15 at night in my house? Why are they not sleeping? Why are they
16 talking? She said, Don't bother them -- Misha is teaching your
17 son good things so don't interrupt it. Just wait until they
18 leave, and then you can go take a shower.

19 Q. You said you didn't participate in the conversations
00:55 20 because you didn't like them. What didn't you like about those
21 conversations?

22 A. Well, for me, these talks about religion are not
23 particularly interested when they intermix these talks with
24 politics and conspiracy theories and Satanism. So I just
25 generally don't pay attention to people who talk much about

1 religion.

2 Q. So --

3 A. Because I believe faith is for one own, not for showing
4 off.

5 Q. At some point did you begin to see changes in Tamerlan?

6 A. Yes. After this visit -- well, during that visit and
7 after I would talk with Tamerlan about who's this Misha? Why
8 are you listening to him? He would defend Misha as if he was a
9 good person, and he just converted to Islam so he has a lot of
00:56 10 background to learn from. So after I left, I used to call
11 Tamerlan again and again. And one call I ask him, So how is
12 your boxing? How are you doing in boxing? And he says, you
13 know, I quit boxing. I ask him, Why would you quit boxing?
14 You love it. This is the goal of your life to box, to become a
15 professional boxer. Why would you stop? His answer to me was,
16 Misha said to me, in Islam, hitting people in the head is not a
17 good thing to do so we shouldn't be doing it. And that raised
18 concerns for me, of course. So I talked to him more about it,
19 and I said to him he should do what he loves, but I guess he
00:57 20 didn't listen.

21 And then the other conversation I had with him is he
22 started -- he was taking some acting classes in some community
23 college, I believe. And he would also do music with his
24 friends. And when I ask him, So how is this thing going? How
25 is your music? He said, I quit music, too. I go, Why would

1 you quit music? You used to play the piano since you were a
2 kid. Why would you quit it? He says, again, Misha says that
3 music is not appropriate in Islam, so we shouldn't be playing
4 music or listening to music. And the same thing pretty much
5 happened with his acting classes. He also quit because he
6 didn't have time for it. He needed more time to learn about
7 Islam.

8 Q. Were there unusual beliefs, other than quitting boxing and
9 quitting music and the things that he loved, that Tamerlan
00:58 10 expressed to you?

11 A. I didn't hear what you said in the beginning of the
12 question. Could you repeat it?

13 Q. Other than Tamerlan quitting boxing and quitting music and
14 the things that he loved, did he express any unusual beliefs to
15 you?

16 A. Did he act unusually, did you say?

17 Q. Did he tell you about unusual beliefs that he had
18 developed?

19 A. He did talk to me a lot about religion itself in general
00:58 20 and particularly about conspiracy theory, and he was getting
21 into that a lot. He showed me some videos on the internet
22 about that stuff. He was hoping to find some books to read
23 about conspiracy theory. It did seem interesting to him. He
24 did seem like he had a goal to actually find out what is
25 happening around the world, how it is connected with politics

1 and how it is connected with big businesses and how -- what
2 place he has and religion has in between all of that. He was
3 searching for this kind of stuff, yes.

4 Q. During that time that you were visiting the family home,
5 did you get to see Tamerlan's relationship with Jahar?

6 A. Yes, of course, I did.

7 Q. And can you tell us what you observed about that?

8 A. Well, Tamerlan loved his younger brother, absolutely
9 adored him. And he always tried to show it, and he always
01:00 10 tried to put himself as a -- as well as with the mother, the
11 defender of Jahar. His older brother is leader, I guess.
12 Tamerlan himself was very charismatic, and he was a leader
13 within himself. And he was -- it was an easy thing for him to
14 be the elder brother. He would -- every day he would talk to
15 Jahar about how he's doing in school and how he should be
16 doing. And then they would spend time just by themselves,
17 like, you know, walking outside, talking. And for most of the
18 time when I spoke to Tamerlan about Jahar, Tamerlan just
19 couldn't -- he couldn't find enough words to express his love
01:01 20 to his younger brother and to express how much he's ready to do
21 in order for Jahar to be successful in life, for Jahar to be
22 happy in his life.

23 Q. So did the respect and admiration go the other way? Did
24 it appear that the two of them were very close?

25 A. Again, I can't hear you well. I'm sorry.

1 Q. You've told us how Tamerlan viewed Jahar. How about how
2 Jahar viewed Tamerlan?

3 A. Oh, well, Jahar, him being the younger brother, he -- of
4 course, he listened to Tamerlan. He went along any time
5 Tamerlan would say let's go do this and that. He would just go
6 along and always find time to actually go along. He would be a
7 good younger brother, I would say, as he was supposed to be in
8 the Chechen family.

9 Q. You mentioned the younger brother in a Chechen family.
01:02 10 You've told me a saying that comes to mind about the younger
11 and the older brother in a Chechen family. Can you tell the
12 jury?

13 A. There is a saying we have in Chechnya which goes like, it
14 is -- in a family with seven sons, it is better to be a dog
15 than the youngest son, meaning that the youngest of the boys is
16 obliged to do the things that the other boys tell him. So he
17 had to obey every order that the elder brother say, any of
18 them, any of the six brothers. So in a way it's better to be a
19 dog because then you wouldn't be able to do so many things
01:02 20 because you're a dog and not a human.

21 Q. Your son Zia is also Anzor and Zubeidat's grandson. Did
22 you maintain contact with them about your grandson after you
23 left the United States?

24 A. Did I what?

25 Q. Did you keep in touch with Anzor and Zubeidat regarding

1 your grandson after you left the United States? I mean their
2 grandson.

3 A. My son stayed in the U.S. when I left for -- when we
4 separated. Yes, he stayed with them, with the Tsarnaev family.
5 Is that --

6 Q. Yes.

7 A. -- what your question? I didn't hear your question well
8 actually.

9 Q. I'm sorry. When you went back to Kazakhstan, Zia stayed
01:03 10 in the United States?

11 A. Uh-huh, yes.

12 Q. And at some point did he come back to Kazakhstan to be
13 with you?

14 A. Oh, yes, yes, he did. Zubeidat Tsarnaeva brought him on a
15 flight from Boston to Almaty. She brought him to stay with me
16 for a few months, two months or three months, I believe.

17 Q. Do you remember when that was?

18 A. I do not remember the exact date, but Ziyaudi was about
19 two and a half years old.

01:04 20 Q. So Ziyaudi was born in what year? 2007?

21 A. April of 2007, yes.

22 Q. So maybe --

23 A. April 15, 2007.

24 Q. 2009 or 2010 was when Zubeidat brought him to visit?

25 A. Maybe a little later, maybe a little later than that, 2010

1 -- 2010 probably.

2 Q. When Zubeidat brought Ziyaudi to visit you, did you notice
3 any change in her?

4 A. Yes. When I met her in the airport, I was a little bit
5 surprised by her clothing because she had all of her body
6 covered with clothing. Basically, she dressed up as a good
7 Muslim woman would.

8 Q. Was she wearing the hijab?

9 A. Something like a hijab, yes. I can't say it was like the
01:05 10 Arab hijab itself, but it was close to that.

11 Q. Did that surprise you? What effect did that have on you?

12 A. To be honest, it actually made me laugh more than be
13 surprised because, knowing that person, I know that wearing
14 these clothes isn't going to change her, the way that she is
15 actually. So I just saw it as an attempt to cover up what she
16 has on her mind as if it could help.

17 Q. During this period of time, did you notice changes in
18 Tamerlan? Did you have an opportunity to see Tamerlan after
19 2010?

01:06 20 A. I was finishing college in 2011. And as I was about to
21 graduate, I have agreed with my ex-wife Ailina that on my way
22 back to Kazakhstan that I'm going to make a stop in Boston and
23 pick my son up and fly with him. And when I stopped by, we
24 were supposed to meet at South Station in Boston.

25 And when I arrived, I spent, like, six hours waiting there

1 to see her to pick up my son. But she never came, and I
2 couldn't get in touch with her by phone either because her
3 phone was either off or she didn't answer. So I started trying
4 to call each member of the family. So I called the father, the
5 mother, and the sister Bella, and then eventually I got through
6 to Tamerlan, and I briefly spoke to him. I told him the
7 situation, that I'm here waiting for my son. Do you know about
8 the whereabouts of Ailina and the boy? And he said, No, I
9 don't know where they are, and I can't get in touch with them
01:07 10 either.

11 So then I told him, Hey, I have a few hours here. Would
12 you mind driving down to the South Station and talk to me about
13 things? Life has moved on. Maybe you have things to discuss
14 now. And his answer to me was surprising, actually, that, you
15 know, I'm just getting out of my house, and I have to go to the
16 mosque. I have to do some things at the mosque. I have to
17 help out people. So, no, I'm not going to meet you.

18 Q. Was that surprising to you given your relationship with
19 Tamerlan?

01:08 20 A. Yes, it was surprising to me because usually, even though
21 we have separated with his younger sister, we still kept a good
22 relationship between ourselves. We didn't have a fight because
23 we didn't have a conflict because of it. We still stayed -- I
24 can't say we stayed good friends, but we were still in -- in --
25 at least in respect to each other.

1 Q. When did your son ultimately come to be with you in
2 Kazakhstan?

3 A. In fall of 2012.

4 Q. How did he arrive there?

5 A. My younger brother was going to the same college as I was.
6 And as he was finishing up his English program in the end of
7 the summer, about that time, Zubeidat Tsarnaeva contacted my
8 mother and told her that, if we wanted to, we could take Zia
9 for a few months. So since my brother was already there, I
01:09 10 told them that he's going to stop by in D.C. and take my son,
11 and I asked them to bring Ziyaudi to D.C., to the airport. And
12 eventually Jahar was the one who brought Zia to D.C. and gave
13 him to my younger brother, and my younger brother flew with him
14 to Almaty, Kazakhstan.

15 Q. You're aware that Zia had a relationship with Jahar as
16 well, right?

17 A. Oh, yes. Zia and Jahar, from the words of my son,
18 Ziyaudi, Jahar is his older brother, and he was always around
19 him when everyone would be either at work or somewhere else, at
01:10 20 school. Jahar would be the one baby-sitting him. And they
21 were like brothers.

22 Q. I'm going to show you a final picture, 3507-066. Do you
23 have it there?

24 A. Yes, I have it, yes.

25 Q. Can you tell the jury who that is in that picture?

1 A. On this picture, you can see my son on the left, Zia, and
2 Jahar Tsarnaev on the right.

3 Q. Is that reflective of your understanding of their
4 relationship?

5 A. Yes. I believe, on that picture, they are either on the
6 Skype talking to someone else in the family. So probably Jahar
7 was starting up the computer to let Zia talk either with one of
8 my family members or maybe with me even.

9 Q. Can you tell us by looking at your son about how old he
01:11 10 was at that time?

11 A. He's about -- about he was four year old, I would say,
12 yes, about four years old in that picture.

13 Q. In about 2011, before he came back to Kazakhstan?

14 A. Yeah. It was about 2011, maybe fall of 2011.

15 MS. CLARKE: Thank you. Give me just one moment,
16 Elmirza. I'll be right back.

17 Q. Elmirza, at some point, you've told us that Zia came to be
18 with you in the fall of 2012 and the plan was for a few months,
19 right?

01:12 20 A. Yes.

21 Q. And that he would then return to Ailina, right?

22 A. After that he was supposed to return, yes.

23 Q. And did he return?

24 A. No, he did not return because later on we discussed it
25 with Ailina. We decided that I might keep him for his

1 birthday, which is April 15th. And, you know, on that date, on
2 that exact date, the Marathon bombings happened. So a few days
3 after the bombings, we found out who are the suspects. And
4 after that, I decided that it's not a good idea to send my son
5 over there at the moment.

6 MS. CLARKE: Thank you. I have no further questions.
7 The prosecutor, Mr. Chakravarty, may have some questions for
8 you.

9 THE WITNESS: Thank you.

01:14 10 CROSS-EXAMINATION BY MR. CHAKRAVARTY:

11 Q. Good morning, Mr. Khozhugov. Excuse me, good evening for
12 you.

13 A. Good evening. Good morning, actually, for you.

14 Q. Mr. Khozhugov, you just told us that your son Ziyaudi was
15 born on April 15th, is that correct?

16 A. Yes, April 15th, 2007.

17 Q. 2007. And he spent some substantial time in the apartment
18 at 410 Norfolk Street, the Tsarnaev family house?

19 A. He spent a lot of time in there, yes, as I am aware.

01:14 20 Q. And the defendant was close to him?

21 A. Yes, the defendant was close to him.

22 Q. And the defendant chose to bomb the Marathon on April
23 15th?

24 MS. CLARKE: Your Honor, I'd object.

25 THE COURT: Sustained.

1 Q. And he was -- your son was supposed to come back to the
2 United States for his birthday, correct?

3 A. He was supposed to come back to the United States after
4 his birthday party here in Almaty.

5 Q. I see. So his birthday was going to be celebrated on
6 April 15th in Almaty, and then he was going to return to the
7 United States?

8 A. Uh-huh, yes.

9 Q. It was that day that the Marathon bombing happened, so you
01:15 10 were not able to bring him back, correct?

11 A. Yes.

12 Q. Now, Elmirza, you grew up in Kazakhstan, correct?

13 A. I did grow up here, yes.

14 Q. And you are also of Chechen extraction, is that right?

15 A. Ethnicity?

16 Q. Yes.

17 A. Yes, I am Chechen.

18 Q. Are both sides of your family Chechen?

19 A. Yes.

01:16 20 Q. And despite that you've grown up in Kazakhstan, but you
21 don't speak the Chechen language, correct?

22 A. That is correct. I do not speak the Chechen language.

23 Q. And you don't consider yourself to be an expert on Chechen
24 culture, right?

25 A. I do consider myself.

1 Q. You do consider yourself to be an expert on Chechen
2 culture?

3 A. Fluent in the Chechen culture, absolutely.

4 Q. Do you remember talking to the FBI back in 2013?

5 A. Excuse me?

6 Q. Do you remember talking to the FBI in 2013 after the
7 bombing?

8 A. Yes, I do remember that.

9 Q. And do you remember telling the FBI that you do not speak
01:16 10 Chechen, and you are not familiar with their culture or
11 traditions?

12 A. I do not recall me saying these exact words, but I may
13 have said that, yes.

14 Q. Regardless of -- Ruslan Tsarni, the defendant's uncle, he
15 was also in Kazakhstan for several years, correct?

16 A. That is correct.

17 Q. At one point -- I think you described on direct
18 examination that the Tsarnaev family came and lived with him in
19 Kazakhstan, is that right?

01:17 20 A. The children came and lived with him.

21 Q. And that includes Tamerlan, Bella, and Ailina?

22 A. Tamerlan was there, and I believe Ailina and Bella were,
23 too.

24 Q. And the defendant and his parents, however, they traveled
25 to the United States around that time, correct?

1 A. The defendant's parents were either on their way to the
2 United States or already in the United States. I cannot say
3 for sure because at that age I was not aware of all of what was
4 happening in their family.

5 Q. So I'm trying to establish that Ruslan Tsarni, your -- I
6 guess he's your brother-in-law, but he was the defendant's
7 uncle?

8 A. Yes.

9 Q. -- was very supportive of the rest of the Tsarnaev family;
01:18 10 is that fair?

11 A. Can you repeat the beginning of your question, please?

12 Q. Sure. Ruslan Tsarni was very supportive of the Tsarnaev
13 family, correct?

14 A. In what respect?

15 Q. Well --

16 A. I don't -- it's not a clear question.

17 Q. Okay. Thank you. Did he financially support the children
18 when they lived with him in Kazakhstan?

19 A. He was supportive of the children, yes.

01:19 20 Q. And, in fact --

21 A. He did pay for their school.

22 Q. And, in fact, he helped put on your wedding, correct?

23 A. He -- yes, he did help with the weddings for both of the
24 daughters of Anzor.

25 Q. There were times when Tamerlan would come and stay with

1 you in Kazakhstan as you grew up -- as you were growing up,
2 back when he was in his teens, is that right?

3 A. Yes.

4 Q. And Ruslan would support Tamerlan when he would come out
5 to Kazakhstan as well?

6 A. Ruslan was what? Excuse me.

7 Q. Would Ruslan support Tamerlan when he would come to
8 Kazakhstan as well?

9 A. Yes, he did support him, of course.

01:19 10 Q. Eventually, Ruslan came to the United States to live here,
11 correct?

12 A. Yes.

13 Q. And when he came here, he visited you in Washington, I
14 think you said?

15 A. Well, since I was living in his house, yes, he visited.

16 Q. So he actually purchased a house for you in Washington so
17 you could stay there and go to school, correct?

18 A. He didn't buy the house for me.

19 Q. Okay.

01:20 20 A. He just bought a house. And when it was time when I was
21 about to go to college, he told me, Hey, there's this nice
22 college right next to the place where I bought a house. Do you
23 want to go there? And I said sure.

24 Q. Okay. So you stayed in the house that he had purchased in
25 Washington?

1 A. Yes.

2 Q. So he was generally very supportive of his family, is that
3 right?

4 A. He was very supportive, absolutely.

5 Q. And he had the financial means, and he also had the
6 interest in supporting people in his family, correct?

7 MS. CLARKE: Your Honor, I'm not sure --

8 A. He had financial -- what did you say?

9 Q. He had the financial means and had the interest --

01:21 10 THE COURT: I think there may be an objection.

11 MS. CLARKE: Your Honor, I'm just not sure the
12 relevance of going off on --

13 THE COURT: Go ahead.

14 MR. CHAKRAVARTY: It won't be much longer.

15 Q. Ruslan Tsarni was supportive of the people in his family,
16 including you, including the Tsarnaevs, correct?

17 A. Yes.

18 Q. And is it fair to say that he was the youngest of the
19 Tsarnaev brothers, or the Tsarni brothers?

01:21 20 A. Can you repeat the question, please?

21 Q. Was your -- was your brother-in-law Ruslan --

22 A. Can you just speak more slowly? I can't catch the words
23 so fast right now.

24 Q. Was Ruslan Tsarni the youngest of the Tsarnaev brothers?

25 A. Yes, he was the youngest.

1 Q. And it's not customary that the youngest brother would be
2 supportive -- would be the primary supporter of the other
3 family members, is that correct?

4 A. It is not very common that the youngest brother is the, so
5 to speak, bread giver in the family. It is very unusual. And
6 in most of the family that I know, usually it's the older
7 brother who is supporting the younger children. But in respect
8 to the Tsarnaev family, they just have a younger brother who
9 outsmarted the rest of the family. And being that smart child
01:22 10 in the family, he acts as if he's the eldest one, and he is
11 trying to help the rest of the family. And it doesn't stop
12 with his family. It also includes myself and my younger sister
13 who is now living in his house and goes to college over there.

14 Q. He lives in Maryland, is that correct?

15 A. Yes.

16 Q. And you describe being friends with -- strike that.

17 Before we leave Ruslan Tsarni, he acts as the --
18 essentially, he takes the role of the patriarch of the family,
19 as you describe, because he's the smartest in the family, is
01:23 20 that right?

21 A. Smartest and most successful, I would say.

22 Q. And he's actually supportive of Alvi's son Andy as well?

23 A. Yes, he is.

24 Q. Okay. As well as -- I think you mentioned Hussein
25 earlier?

1 A. Hussein as well.

2 Q. Now, you described you were friends with Tamerlan back in
3 Kazakhstan, correct?

4 A. Uh-huh, yes.

5 Q. And he was a very likable fellow?

6 A. He was very likable, yes.

7 Q. And he was goofy and he had friends?

8 A. Yes.

9 Q. And when he came to the United States, you also spent some
01:24 10 time with him with some of his friends here?

11 A. I don't know -- he didn't have many friends in the U.S.
12 outside of the Chechen community in there.

13 Q. Do you remember telling the FBI that on the weekends he
14 would meet with some of his friends, including one I think you
15 mentioned was Abu Bakr, and they would sit around and drink
16 beers?

17 A. Again, please speak a little more slowly because the
18 outdoor here is a little bit noisy. When you separate your
19 voice, I can hear it better.

01:24 20 Q. Sorry about that.

21 Do you remember telling the FBI that you would spend some
22 time with Tamerlan and some of his friends here in the Boston
23 area? One person you named was Abu Bakr. And on weekends they
24 would spend some time and they would drink beer?

25 A. Yes, that happened.

1 Q. And he was generally -- he was the same person that you
2 knew back in Kazakhstan, correct?

3 A. He has become bigger at that point, yes, and still he was
4 very friendly. And I would say he would be the heart of the
5 party or the center of attention again, yeah.

6 Q. And he continued to box in the United States?

7 A. Yes.

8 Q. And I think you mentioned on direct examination that you
9 -- that he told you that he was told not to box by a person
01:26 10 named Misha, is that right?

11 A. Yes, he told me that.

12 Q. Do you remember telling the FBI in August of 2013 that it
13 was actually his parents that encouraged him not to box
14 anymore?

15 A. His parents -- his father encouraged him to stop boxing.
16 He was encouraging him for a few years before he actually
17 stopped.

18 Q. And then --

19 A. But when I spoke to him on the phone, particularly he said
01:26 20 to me that Misha told him that it's not appropriate in Islam,
21 and that's why he stopped.

22 Q. Do you remember also telling the FBI that you said he then
23 started boxing again?

24 A. He started what?

25 Q. Boxing again.

1 A. That -- yeah, that happened, and he was boxing, I mean,
2 professional boxing, like in his high school, I mean, not
3 exactly professionally but boxing for titles, and then he would
4 quit and try something else. He would work and not do as much
5 boxing. And then again he would attempt -- make an attempt to
6 start boxing professionally again. He would go to the gym,
7 spend a lot of time there. And eventually he just -- make sure
8 you know the time patterns when you ask these questions
9 actually.

01:27 10 Q. So your last contact with Tamerlan was in 2010, is that
11 right?

12 A. My what with Tamerlan was in 2010?

13 Q. Your last contact with Tamerlan.

14 A. Over the phone, it was in 2011, last contact.

15 Q. Over the phone was in 2011. But your last personal
16 contact was in 2010?

17 A. Yes.

18 Q. Okay. And at that point, your relationship with Ailina
19 was pretty well broken, correct?

01:28 20 A. We were separated by that time, yes.

21 Q. And do you remember telling the FBI that in your culture
22 it's not allowable to maintain a friendship with the brother of
23 one's ex-wife?

24 A. Yes, I did say that.

25 Q. And so you weren't having a lot of contact with Tamerlan

1 after that point, correct?

2 A. I did not have -- I was not supposed -- and I did not have
3 a lot of contact with him as friends, but we were still family.
4 And, yes, we did contact because we were family.

5 Q. So when, in 2011, you said that you were at South Station
6 hoping to spend some time with him, you shouldn't have been
7 surprised that he was not eager to spend time with you,
8 correct?

9 A. No. I was surprised because --

01:29 10 Q. I understand you told us that you were surprised.

11 A. The reason -- I understand your question is about the
12 reason why, because when I met him in 2010 and we were already
13 separated with his sister, when I saw him, he hugged me and we
14 did talk. And it was the same situation. I was picking up my
15 son to take him with me, instead this time I was staying in
16 D.C. with Ruslan. But a little more than a year later, what I
17 get from him is, Hey, I'm busy with doing mosque things so, no,
18 I'm not going --

19 Q. So is it fair to say, though, by that time, by 2011, your
01:30 20 relationship with the Tsarnaev family was based solely on their
21 custody of Ziyaudi?

22 A. Yes, it is correct.

23 Q. And you didn't do a lot of socializing, and you weren't
24 very communicative with them at that time, correct?

25 A. We contacted mostly with a -- me and the mother Zubeidat,

1 we contacted a lot.

2 Q. And she acted as a liaison between you and the family?

3 A. She act as what?

4 Q. As a liaison between you and her sons and daughters.

5 A. We just contacted for discussions about my son primarily,
6 and then in between we would discuss how is every person in the
7 family doing at that point in time.

8 Q. So from 2010, 2011, 2012, and into 2013, you did not have
9 a lot of a window into what was happening in the Tsarnaev
01:31 10 household, correct?

11 A. I did not have much physical contact with -- I mean, I
12 didn't see them personally a lot. I did not talk to them a lot
13 because it was not possible due to the distances. But in any
14 way, they are my family and I am connected to them, not just
15 through my son but also my sister who is married to their
16 uncle. So we always knew about what's happening in between us.
17 So it would be safe to say that we were informed of what was
18 happening in the family.

19 Q. But the relationship between Ruslan, your brother-in-law,
01:32 20 and Anzor had also soured, and they were not talking to each
21 other?

22 MS. CLARKE: Your Honor, the relationship --

23 A. That is correct.

24 THE COURT: Go ahead.

25 Q. And you weren't getting that much information about what

1 was happening inside the Tsarnaev household, correct?

2 A. I was getting information from the women in the family, I
3 mean, my own sister and my -- and the grandmother of Jahar and
4 Tamerlan, Liza and Zubeidat, too. The women, of course, find
5 ways to talk to each other about what's happened. But given
6 that Ruslan and Anzor didn't have the best relationship at this
7 point in time, I couldn't get information from Ruslan. That's
8 true.

9 Q. The only information you were getting was information that
01:32 10 Zubeidat wanted to get out, correct?

11 A. That is possible, that we only heard what she wanted us to
12 hear.

13 Q. You mentioned that you didn't have that much of a
14 relationship with Jahar when he came -- when you came to the
15 United States because he was always studying when you would
16 visit the home, is that fair?

17 A. That is correct. We -- I was friends with his older
18 brother, so I would spend more time with Tamerlan than with
19 Jahar, of course.

01:33 20 MR. CHAKRAVARTY: Thank you, Mr. Khozhugov.

21 THE WITNESS: Welcome.

22 MS. CLARKE: Thank you. I should probably -- Elmirza,
23 thank you very much.

24 THE WITNESS: Okay. Thank you.

25 THE COURT: We'll terminate the witness' testimony,

1 and we'll terminate the connection.

2 Why don't we take a short break. We're almost at the
3 morning recess time. We'll just take a short break early.

4 THE CLERK: All rise for the Court and the jury. The
5 court will take the morning recess.

6 (Recess taken at 10:45 a.m.)

7 THE CLERK: All rise for the Court and the jury.

8 (The Court and jury enter the courtroom at 11:14 a.m.)

9 THE CLERK: Be seated.

02:04 10 MS. CLARKE: Your Honor, the defense would call
11 Dr. Jay Giedd.

12 JAY GIEDD, duly sworn

13 THE CLERK: Have a seat.

14 State your name, spell your first and last name for
15 the record, keep your voice up and speak into the mic so
16 everyone can hear you.

17 THE WITNESS: Jay Giedd, first name J-A-Y, last name
18 G-I-E-D-D.

19 DIRECT EXAMINATION

02:05 20 BY MS. CLARKE:

21 Q. And I'm going to call you "Dr. Giedd." You are an M.D.?

22 A. Correct.

23 Q. Dr. Giedd, where are you currently employed?

24 A. At the University of California San Diego.

25 Q. And how long have you been at UC San Diego?

1 A. Since August of 2014, so eight months.

2 Q. And where were you before that?

3 A. Since 1991 I'd been at the National Institute of Health,
4 chief of brain imaging in the child psychiatry branch.

5 Q. Since 1991?

6 A. Yes.

7 Q. Up until?

8 A. Until August of 2014.

9 Q. And why did you move to San Diego, other than for the
02:06 10 weather?

11 A. It allowed me to expand the scope of my research into --
12 in addition to the institutes here in Boston, it's one of the
13 centers for people who study brain development; the people, the
14 technologies and support for my work to have a greater impact.
15 So I liked my years at NIH a lot, so it was a difficult
16 decision, but it turned out to be the right one for me.

17 Q. And "NIH" is the National Institute of Health?

18 A. Correct. National Institutes of Health, and then a subset
19 of that is the National Institute of Mental Health.

02:07 20 Q. Before we get into why you're here, can you tell us a
21 little bit about your educational background?

22 A. I grew up in North Dakota and went to college and medical
23 school there. My undergraduate degrees were in mathematics,
24 then philosophy, then the natural sciences, biology, chemistry,
25 physics.

1 After medical school, I did psychiatric training at the
2 Menninger Foundation in Topeka, Kansas, which was an old-school
3 psychoanalytic model; and then Barrow Neurologic Institute in
4 Arizona; and then I went to Duke University and did geriatric
5 and child and adolescent psychiatry training.

6 Q. Both ends of the spectrum.

7 A. Yeah. It's a little unusual to be boarded in both
8 geriatric and child, but they have more in common than people
9 think, sort of the riddle of the Sphinx where people lock on
02:08 10 four and then two, then three. So there's this idea of last
11 in, first out or a palindromic that a lot of the changes in
12 early brain development are undone in aging. And so they're
13 not opposites; they're actually quite similar issues about how
14 the brain changes over time.

15 Q. And so I take it that you specialized in both geriatric
16 and child and adolescents?

17 A. Yes, but predominantly child and mostly adolescents, just
18 the nature of the studies. We followed people from young ages
19 and had them come to my lab every two years. We took a picture
02:08 20 of their brain. We got their DNA from their blood or their
21 saliva or their skin. And we ask questions how they're doing
22 at home, at school, at work.

23 And so many of the people in the study then matured
24 through the second decade of life, and that became key because
25 that's when most mental illnesses emerge. Not all of them, not

1 Alzheimer's, not autism, ADHD, but schizophrenia, bipolar
2 disorder, eating disorder, substance abuse, panic attacks,
3 bipolar disorder. So over half of all of the illnesses that
4 emerge, emerge during the second decade.

5 Q. So your career has been in research?

6 A. Yeah, I'm a practicing psychiatrist, but most of my time
7 is spent with research, and most of it related to brain
8 imaging, genetics and behavior.

9 Q. And when you said you were boarded in both geriatrics and
02:09 10 child and adolescence psychiatry, what does that mean?

11 A. Oh, just for medical certification, you can -- after
12 psychiatry, you can then develop a subspecialty with extra
13 training in different areas. And one of the areas is
14 geriatric, and another one is child and adolescent psychiatry.
15 So it's doing additional training in those age groups.

16 Q. Have you published in the area of child or adolescent
17 brain development?

18 A. Yes.

19 Q. A lot?

02:10 20 A. Over 300 papers, but the type of work I do is team
21 science, so a lot of people contributed to those efforts, then
22 papers with over 500 people from 80 different institutions. So
23 a lot of papers, but most of them as part of a team.

24 Q. And when you were at NIH, was most of your research
25 focused on adolescent brain development?

1 A. Toward the second decade of the research, since we started
2 young and then as people aged, a lot became that. About half
3 is healthy children and youth, and the other half was for
4 illnesses such as schizophrenia, autism, ADHD, but 30 different
5 groups. And both my work and my writing is almost exactly half
6 and half, half healthy and half illnesses.

7 Q. All right. So you publish in the area of the healthy
8 adolescent brain and the unhealthy adolescent brain?

9 A. Yeah. Some of the -- along the way then I became an
02:11 10 adjunct professor in the department of family and reproductive
11 medicine at Johns Hopkins. And one of the themes there was
12 unwanted teen pregnancy. So that's not an illness, but it
13 still has a huge impact on the lives of youth and their
14 families.

15 And so much of what I did I realize wasn't technically an
16 illness, but it was still a huge impact, life decisions,
17 people's decisions about careers, relationships, education,
18 military service. And so it's kind of an odd area that is not
19 technically an illness, it's not covered by medical insurance
02:12 20 plans, but for adolescents it still has a huge impact on their
21 lives.

22 Q. Okay. So we asked you today to come and talk with us and
23 with the jury and educate us a little on the science of brain
24 development. Is that correct?

25 A. Yes.

1 Q. That was the specific task?

2 A. Yes.

3 Q. First, can you define for us "adolescence"? What does
4 "adolescence" mean?

5 A. So it is what I do a lot of, but it's a bit mushy to
6 define precisely. It starts in biology with puberty, and it
7 ends in society in terms of being an adult role in society. So
8 both the start and the end are imprecise because puberty can be
9 anywhere between nine and 15 and still normal, and when we
02:12 10 attain independent adult role in society, there's also a moving
11 target. So people are waiting longer to get married, to start
12 families, to buy a house, to start families.

13 So it's a little bit imprecise in its onset and closure,
14 but the idea is when we become from child into an independent
15 functioning adult.

16 Q. Have we learned -- "we," as a science -- learned a lot
17 about brain development in the last few decades?

18 A. Yes, we have, largely because of technology like brain
19 imaging but also genetics and other areas. One of the odd
02:13 20 parts about brain maturation -- so when you talk about
21 adolescents, sort of the brain being mature enough to not need
22 protection from that person's decisions, society's been -- has
23 reached almost no consensus. So the age of reason in
24 Catholicism is eight when you can be held accountable, morally,
25 for your actions; to be -- a consent to sex is 13, depending on

1 which state; to be married, 15; driving, 16; 18 to vote, to buy
2 cigarettes or be drafted; 21 for a governor; 25 for House of
3 Representatives; 30 for Senate; 35 for President. It's all
4 over the place in terms of the consensus of, you know, when is
5 the brain, quote, "mature."

6 And so a lot of the work has been trying to have
7 neuroscience help inform this gray area.

8 Q. I would like to get you to talk to the jury a little bit
9 about what you called the brain maturing, the maturation
02:14 10 process. We have -- you provided some slides, PowerPoint
11 slides. Would those help illustrate your testimony?

12 A. Yes. Yes.

13 Q. Let me pull up the first slide.

14 MS. PELLEGRINI: No objection, your Honor.

15 THE COURT: To any of them?

16 MS. PELLEGRINI: No.

17 THE COURT: Okay.

18 MS. CLARKE: I think the number is 3434, your Honor,
19 and there's a small video embedded in one of the slides that
02:15 20 would be 3434A.

21 (Defense Exhibit Nos. 3434 and 3434A received into
22 evidence.)

23 BY MS. CLARKE:

24 Q. Can you tell us, this first slide, Brain Maturation, can
25 you tell us a little bit about this connection in

1 specialization?

2 A. Well, when we started these studies, we kind of wondered,
3 should we follow people till 16 or 18, because I'm out of --
4 adolescent psychiatrist, by 16, people are already winning
5 medals in the Olympics; that they're quite smart and mature and
6 skilled. And even concern that it was only because of the
7 Industrial Revolution that we've sort of stretched out this
8 whole adolescence.

9 So the first surprise was that it wasn't 16 or 18 but more
02:15 10 like 25 to 30 when the brain was still having very active,
11 dynamic changes. And this just wasn't even on our radar
12 screen. We looked more closely, and things like if you go to
13 the airport to rent a car, you have to be 25 or else the rates
14 are extraordinarily high. And so with that -- this is the
15 trouble in neuroscience that Hertz has all the best
16 neuroscientists and we couldn't make progress.

17 But this later became called the paradox of adolescence.
18 So you should be at the top of your game, your resistance to
19 cancer, tolerance for heat and cold, agility, physical acuity,
02:16 20 so many things you measure you're absolutely at the top of your
21 game.

22 But morbidity and mortality go up 300 percent during this
23 time. And so it was puzzling in terms of why, when we're so at
24 our peak physically, that we have all of these concerns related
25 to decision-making. Predominantly motor-vehicle accidents is

1 the number one cause of death for teens; suicide or homicide
2 are two and three, depending on how people characterize the
3 events. But all of the top 10 seem to be related to these kind
4 of brain maturation functions.

5 Q. So the brain matures over a period of time. In the teen
6 years, I think you have said that it doesn't grow by getting
7 bigger, but it grows how?

8 A. That surprised us at first. So by age six, the brain is
9 already 93 percent of adult size. And at first, that was very
02:17 10 disappointing because we were going to watch how the brain grew
11 as we got smarter. So it's this big, we can do arithmetic;
12 this big, algebra; this big, calculus. And so when we realized
13 that the size of the brain was so close to its maximum so
14 young, it was a bit disappointing.

15 And that still remains the case. The brain is as big as
16 it's going to get by about 12, and actually becomes smaller
17 after that. So it's like Michelangelo's David emerging from
18 the granite, that we specialize the brain by actually making it
19 smaller. We eliminate unused connections or connections that
02:18 20 lead to bad things.

21 Q. Well, what do you mean by "becoming more connected"?

22 A. So we used to think we'd point to a part of the brain, and
23 so this part of the brain does X, and this part of the brain is
24 for memory, and this part of the brain is for looking to the
25 future. And that's been one of the changes. So now we see

1 different parts of the brain are more like letters of the
2 alphabet. And by about eight months, we have all of the
3 letters in place.

4 What happens as we go from child to teenager to adult
5 through life, those letters get formed into words, the words
6 into sentences, the sentences into paragraphs. So that's how
7 the brain matures, but -- by becoming more connected within
8 itself, but not by growing larger.

9 Q. So there's actually something happening in the brain to
02:18 10 make it more connected?

11 A. Yes. Yeah, there's a process called myelination, which is
12 where the nerves are wrapped in insulation, just like a copper
13 wire. It's wrapped with that rubber coating to make the
14 information go faster. And so throughout life into the fifth
15 decade for women and the fourth for men, we get more and more
16 of this insulation, which makes our brain move 100 times faster
17 than without the insulation, and it's ready to refire again 30
18 times faster. So it's really responsible for what, you know,
19 makes human thoughts much better than other species.

02:19 20 So all throughout adolescence, we have this kind of
21 one-two process of connections that we use become stronger and
22 faster, and the connections that we don't use, they're not just
23 sort of like lying there idle. They're physically removed from
24 the brain.

25 So growing up in North Dakota, it's a very good place to

1 drive or to be a pilot because, from the sky, everything is
2 like a checkerboard. It's all quarter-mile grids. You can get
3 to anyplace on the gravel roads by turning. But as the roads
4 become more used, they become paved between the major grain
5 centers. They might have become multi-lane highways. So now
6 you can zoom down those lanes, but you can't turn off every
7 quarter of a mile anymore. You have to wait for the exits.

8 Q. Sure. So, I mean, there's something physically that's
9 happening in the brain to make it more connected?

02:20 10 A. Yeah. As these changes happen, as you get this insulating
11 material that speeds everything up. Then you pay a price for
12 that and that the brain is not as changeable anymore. So it's
13 this balance of the brain staying changeable but also that we
14 get better and better at what we ask our brain to do.

15 Q. And these connections, do we know how long that process,
16 on the average, takes? You can't say on any given individual,
17 but on the average.

18 A. So different parts of the brain reach adult status
19 different times. The parts of the brain that keeps us alive,
02:21 20 like heart rate, breathing, that has to happen very early, even
21 in the womb. And then our five senses of sight, sound, touch,
22 smell and taste, then those parts -- those connections get
23 formed. And there's this sort of cascade, then, in terms of
24 during the teen years when we have the parts of our brain
25 involved in thinking about the future, making decisions,

1 long-range planning, social interactions. They're the ones
2 that are still under construction.

3 Q. So you also mentioned that, in addition to becoming more
4 connected, the brain becomes more specialized. Can you help us
5 understand that?

6 A. Yeah, it's really the key to humans in terms of -- the
7 biology creates a very broad range of possibilities. And as we
8 go through the teen years, then our brains can become adapted
9 to live in the North Pole or the Equator, anywhere
02:22 10 between -- we can even live in outer space for a little while
11 with the technologies that our brains have developed.

12 And so this is the fundamental tradeoff. Our brains stay
13 changeable way longer than any other species, and that's what
14 allowed us to survive. Even compared to Neanderthals who we
15 coexisted with, their brains were 10 percent larger than ours,
16 but their brains matured earlier. So by 12, Neanderthals were
17 already having their own children, were living with their
18 children in caves.

19 So what happened in humans was that everybody's ancestors
02:22 20 in this room had adolescence whose brains were very changeable.
21 And what predicts the big change in the brain wasn't how harsh
22 the climate was but how rapidly the climate changed. And this
23 became the key to our survival as a species.

24 Q. But when you specialize, what do you mean, the brain is
25 specializing? Is it in an activity, is it -- what --

1 A. Yeah, it can be an activity, a skill, music, a sport,
2 learning -- a knowledge about a certain area, almost anything
3 physical or mental that we can imagine, the more we do it, our
4 brain will become specialized and optimized to do that.

5 Q. More focused on that?

6 A. It will be able to do those tasks with less energy, with
7 less utilization of blood sugar and other energy sources. It
8 becomes more streamlined. We can accomplish those tasks faster
9 and more efficiently. But the price we pay is then we can't
02:23 10 learn other tasks as easily.

11 Q. As we become more specialized?

12 A. Correct.

13 Q. On this slide, why was it that you illustrated this point
14 with the two football players?

15 A. It's -- you know, partly because this is a time -- in
16 terms of whether it's football or music or academics or other
17 things, this is a key time in developing these skills so
18 that -- even younger for certain things, between ages seven-11
19 is the key time to be doing piano, fine motor skills in terms
02:24 20 of certain sports and certain abilities.

21 But during the second decade, one of the key aspects is
22 social because the main task is to stay alive and to reproduce,
23 and so this is a time where there's a lot of social bonding,
24 team sports, learning new skills.

25 Q. I take it that there are other major changes going on in

1 the brain through the teen years. I'm going to pull up the
2 second slide somehow. Can you talk to us a little bit about
3 the major changes in the development of the brain that are
4 going -- maybe in competition with each other or maybe, you
5 know, causing some issues that we call "teenage," going on
6 during the teen years?

7 A. So the part shown here in green is the part --

8 Q. You can touch the screen, Dr. Giedd, and circle -- you can
9 actually draw a circle around what you're talking about.

02:25 10 A. (Witness complies.)

11 Q. There you go.

12 A. Okay. So, yeah, this is the part of the brain -- it's
13 called the prefrontal cortex or the frontal part of the brain,
14 and it's what's most different between us and chimpanzees or
15 other genetic cousins. And it's the part of the brain that is
16 for doing, in a sense, the hard stuff. And so that we have to
17 wait longer for rewards, it controls impulses. It's involved
18 in choosing the larger, later reward versus the sooner,
19 smaller. And it's the part of the brain that allows us to do
02:26 20 time travel.

21 Q. What do you mean?

22 A. Mental time travel. So we don't have to just consider
23 what's happening at the very present moment, like most animals;
24 we can consider all of our memories, all of the experiences
25 that we've had in our life, all of the input coming in through

1 our eyes and our skin and our nose and our mouth but also our
2 hopes and dreams for the future and to tie it all together.

3 So going back to the letter metaphor, this would be where
4 the paragraphs are formed, and it's the part of the brain that
5 is latest to mature. So not --

6 Q. So the part of the brain that is the latest to mature is
7 what allows us to control impulses and to plan and to
8 understand consequences?

9 A. Yes, and to get along with each other socially and to run
02:26 10 these different scenarios in our mind instead of the real
11 world, so we can imagine different consequences and different
12 actions instead of having to physically put ourself in harm's
13 way.

14 Again, this sort of long development is not necessarily a
15 bad thing. It also then allows us to specialize in these
16 different areas. But as opposed to the, you know, 25 or so
17 parts of the brain, the purple parts, the limbic system --

18 Q. Can you show us where --

19 A. Yes. So these areas here, which are a collection of
02:27 20 structures, they have a lot of hormone receptors. And so at
21 puberty, there's drastic changes, not just in the size or the
22 shape of them, but in the receptors and the density of
23 different types of molecules.

24 And there's an explosion, then, in the passions, in terms
25 of sex drive kicks in, aggression, but also fundamentally

1 rewards and punishments. So this -- puberty, if it happens
2 around 12, that leaves a decade or more so in terms of balance
3 that's changing.

4 They're not really at odds with each other. The whole
5 thinking was that the limbic system was sort of primitive and
6 had to be overridden by the civilized, frontal lobe. Now it's
7 seen much more as a dance between them. The limbic system
8 tells us what our goals should be. It tells us our
9 motivations. And the frontal part helps us achieve those
02:28 10 goals. But inherently they're sort of at odds in terms of
11 "Right now I see it, I want to do it, just let it happen,"
12 versus having the kind of stepping back and saying, "Let's
13 think this through," what might be the longer-term
14 consequences. And that balance shifts during the teen years.

15 Q. Then the limbic system could be the emotional drive?

16 A. Yeah, it's emotional, but it's also -- it tells us what's
17 important. So it's basically to stay alive and to reproduce,
18 are the big ones, but also involved in even sleep, hunger, all
19 of the drives that motivate us to do or not do things are
02:29 20 related to the limbic system.

21 Q. And there's a slide I think you have next that we
22 have -- you have captioned "Brain Maturation, Age 4-22."
23 You've already drawn a circle around it --

24 A. Yeah, just to sort of -- so this is actually a movie, if
25 it works as a movie, and it will loop around and around, but

1 just to sort of focus on, again, this is that same area that I
2 was mentioning, the prefrontal cortex, involved in controlling
3 impulses, long-range planning, mental time travel, doing the
4 hard stuff of what makes humans, humans.

5 And what we'll see, if the movie runs, is when it turns
6 blue, that's when it's reaching the adult levels, when it's
7 maturing. And so this part of the brain is amongst the latest
8 to reach adult levels.

9 Q. So what should -- assuming the movie works, what should we
02:30 10 watch for?

11 A. So if I was accurate with the circle, you can kind of see
12 it's sort of like the blue will sort of circle the wagons. It
13 will circle around and sort of close in on this area,
14 indicating that it's very late to reach adult levels. It's not
15 broken or absent in teens; it's just that it's not as good as
16 it's going to get.

17 Q. Let me get you to draw that again. I had to clear the
18 other --

19 A. Okay. Okay.

02:30 20 Q. That's roughly where the prefrontal cortex text is?

21 A. Yeah, and, again, this is on average. So this is an
22 average of 52 brain scans averaged across this age. So for a
23 given person, they, you know, may be earlier or later on this
24 process.

25 Q. Let's make that clear. You're not talking about any

1 individual brain here; you're talking about what the studies
2 collectively would --

3 A. Yeah, that's actually a really important point because
4 when these studies -- when we say, you know, on average
5 people -- there's so many exceptions to the rule, and so we
6 have 14-year-old girls who are very future thinking and are not
7 impulsive and long-range planning and 54-year-old men who
8 never, you know, get to those stages. And so --

9 Q. You're not talking about yourself?

02:31 10 (Laughter.)

11 A. I'm under oath, so I'll say yes. Yeah.

12 (Laughter.)

13 A. And there's just a huge variation. That's been one of the
14 biggest challenges of why we can't do very much with a single,
15 individual scan. So everything I'm saying relates more to
16 child adolescence and adulthood in general. There's many
17 exceptions to the rules.

18 Q. Well, let me click on the movie. And it will repeat
19 itself, I think.

02:32 20 A. The circle moves, so let me see if I can.

21 Q. Here, let me clear that and you can --

22 A. (Indicating.)

23 And so, again, it's not that before this age that it's
24 defective or damaged or nonexistent. But it's just that it's
25 not as good as it's going to get. It's still under

1 construction. But in general, that's a good thing. It allows
2 the brain to keep options open. So during these times we can
3 specialize in all kinds of different things. It's a great time
4 for learning. It's a great time for interventions. So I don't
5 want to paint this as a bad thing or a pathology. It's a
6 healthy part of humans.

7 Q. It's the way it works?

8 A. It worked, yeah. I guess that's a better way to say it,
9 that it's both the blessing and curse of much of my work in
02:33 10 terms of this plasticity creates the vulnerabilities to the
11 illnesses, but it also creates the positives. And it's a
12 double-edged sword.

13 Q. Doctor, I just stopped the film here at an arbitrary
14 place. And can you explain what the blue versus the green is?

15 A. Yes. So the blue would be areas that are already at the
16 adult level at these young ages. So here is -- this is called
17 the sensory and motor strip in terms of this is basic sense of
18 touch and of movement. At quite young ages, that's already at
19 adult levels, visual centers, auditory also, you know, quite
02:33 20 early.

21 This part of the brain is involved in social interactions,
22 in assessing what other people are thinking or feeling,
23 affected in things like autism. But this is the key area
24 involved in the things that make us most human in terms of our
25 individuality.

1 Q. You've told us that the limbic system --

2 MS. CLARKE: If I can now get out of the movie and go to
3 the next slide.

4 Q. You've told us that the limbic system is maturing faster
5 than the prefrontal cortex, essentially?

6 A. It's maturing throughout -- you know, throughout life we
7 always have a reward system, but at puberty it really gets
8 intensified, and so -- and it's literally puberty. So the
9 frontal lobe, whether -- it's more your age, whether you're pre
02:35 10 puberty or post puberty, the hormones don't affect the frontal
11 part as much.

12 But the limbic system is very hormonally sensitive, and so
13 when that's activated, it changes our motivations; it changes
14 our passions, again, for both -- you know, for good and ill;
15 whereas the prefrontal cortex is sort of plugging along at its
16 own -- at its own pace.

17 Q. When do they catch up to each other?

18 A. Somewhere between 25 and 30. And, again, for a given
19 person, it might be quite -- quite different than that. The
02:35 20 brain never stops changing from conception, you know, through
21 death. So sometimes we ask -- we're asked when does the brain
22 stop maturing, when does it stop changing, and it's a difficult
23 thing to answer, but in this context we're saying the brain
24 increases -- more cells, more connections than can possibly
25 survive, and then it prunes down based on our experience, and

1 then it sort of levels off. And so what I'm talking about is
2 this kind of leveling-off process, where things sort of slow
3 down, and that's between 25 and 30.

4 Q. So what does this difference in the balance between the
5 limbic system and the prefrontal cortex mean to us?

6 A. Well, teens are more likely to choose the smaller, sooner
7 rewards, less worried about longer-term consequences, you know,
8 20 years down the road. Again, it may be a reasonable thing
9 for, you know, teens to think that way. It's a time when they
02:36 10 have greater reward seeking -- and this isn't even just humans.

11 All mammals, all social mammals, have these huge changes
12 in sensation seeking, reward sensitivity and a move away from
13 parents to peers. And so this -- these changes are triggered
14 by these limbic changes. And we're not going to make them go
15 away. They're sort of part of our human condition. They're
16 part of like even other species.

17 And so the idea is to keep these non-lethal, in terms
18 of -- car accidents is one example, but substances of abuse,
19 things we didn't have when our brains were evolving, but now
02:37 20 it's kind of a Stone Age brain with modern Computer Age
21 temptations. But these changes affect and suggest a lot of
22 decisions that teens make, many of which are quite rational,
23 you know, in terms of for where the teens are at that moment in
24 their life.

25 Q. So if the prefrontal and the limbic system are trying to

1 catch up to each other, you say they catch up probably by age
2 25. Is that helping us define adolescence?

3 A. It's tricky in terms of at some, you know, point we have
4 to draw the line and we have to realize that for a given person
5 that number is quite different. So I think in terms of 25,
6 maybe, you know, being as good as it's going to get or close to
7 that, but at earlier ages it might, you know, be good enough.
8 It's a tricky line to draw, especially given that it's so
9 different from person to person.

02:38 10 But for certain decisions, in terms of financial planning
11 and things like that, where there is a right answer, it's not
12 even 25. People actually make better decisions well into their
13 50s in certain types of decisions.

14 Q. Where is this -- on the average in the studies that you've
15 done, where is this prefrontal limbic balance at around age 19
16 and 20?

17 A. Well, on average, puberty 12, and then the end point 25,
18 so it's sort of about halfway, actually. Yeah.

19 Q. Well, you've got a scale here. You're saying that the
02:38 20 scale is trying to average by 25 and it's on its way from 12?

21 A. Yes. Yes, on average.

22 Q. There must be some influences on brain development that
23 affect development. What would they be?

24 A. Yeah, so that's a big part of the research. The first,
25 really, 13 years of my research was just creating the maps,

1 what is the path of brain development. And then in 2002, we
2 started looking at what matters, what helps it, what hurts it
3 in terms of what are the influences that sports or music,
4 bacteria, viruses, diet, schools, second languages, video
5 games -- all these different choices.

6 And so one of the ways to address this is to look at
7 twins, identical twins versus non-identical twins. And what
8 was striking was how big the impact of the environment is. And
9 so the environment is not just sort of the pollutants in the
02:40 10 air but family, friends, the media, all the non-genetic
11 influences.

12 And one way to think about it is that the genes are like
13 the lightbulbs on a scoreboard, a huge scoreboard with a
14 billion lights. So we're born -- we might have slightly
15 different numbers of lightbulbs or slightly different
16 arrangements, but what really matters is which lightbulbs are
17 turned on and at what time. That spells out the letters; that
18 spells out, you know, the numbers.

19 And so the genetics really just sort of creates a very
02:40 20 broad playing field, but it's the environment, then, that
21 determines which of the genes are turned on in which sequences,
22 and so we become, you know, much more impressed, I guess, with
23 the potential for the environment to change the brain.

24 Q. Some environmental influences, how would you relate
25 parental influence or sibling influence on the developing

1 brain?

2 A. Well, different environments have different impacts at
3 different ages in different parts of the brain. But
4 particularly during the -- after puberty and before adulthood,
5 the big thing is social, that we stay alive by being part of a
6 team, by being part of a group. We're not the biggest,
7 strongest, or fastest. So it's really -- it's not algebra;
8 it's not the things you learn in school. It's social, you
9 know, fitting into social groups.

02:41 10 And the way that the brain does that is through modeling,
11 you know, not modeling kind of stuff but learning, and learning
12 by example. So reading's only about 5,000 years old. Through
13 most of humanity, nobody read a single word. Our brains learn
14 by example, from our parents or family when we're younger, from
15 peers when we're older, you know, or media. But the brain is
16 really good at learning by example.

17 And, you know, family is the proximate example. And
18 sometimes I'm asked sort of what do I do different as a parent
19 based on the brain science, and it's hard because it's not a
02:42 20 long list. But one of the aspects is that we're always on.
21 We're teaching our children about how to deal with emotions,
22 about time management, about goals and values, not when we're
23 having these big-day talks and, you know, sitting down. It's
24 everyday moments, what we say about them when they're in the
25 back of the car to other people.

1 And so the idea, you know, in terms of this is when their
2 brain -- because it's specializing, because it's eliminating
3 connections and not, this is when we become who we are in terms
4 of our values, identity, you know, what makes us unique
5 individuals.

6 Q. Is there -- in the -- from what we're learning in research
7 and -- your decades of research and others', is there an age
8 range that we can now say is adolescence, or are we still not
9 able to do that?

02:43 10 A. Yeah, at the end of the day, we, you know, kind of go
11 around and around and talk about when you become independent
12 adults. And, pragmatically, we often kind of then come back to
13 the second decade, you know, ten to 20, but more so because
14 of -- like, it depends on the question being asked.

15 But the data is available for the United States, Germany
16 and Japan. Even since the 1970s, we're getting married five
17 years later. We're starting families five years later. We're
18 leaving home, you know, later. 30 percent of college graduates
19 live back at home for at least a year. Not that that's
02:43 20 inherently a bad thing, but biology hasn't changed in 40, 50
21 years.

22 And so the whole notion of adolescence is -- always comes
23 back to for what -- you know, it depends, and for what reason
24 do you want to refine it. It's really hard to deal with the
25 individual variation in terms of how different people are on

1 this scale of maturation.

2 Q. Is there a take-home message on brain development in
3 the -- from, say, puberty through 25 or 30, or 20?

4 A. It's hard to pick one, but I think that one of them is
5 just that itself, how -- how protracted it is, how stretched
6 out the ability of the brain to change. And the second is the
7 changeability, that even, you know, all the other -- for
8 instance, we're kind of amazed at how changeable the brain is,
9 how good it is at adapting to the challenge of the environment.

02:45 10 And it used to be thought at a pretty young age, you know,
11 five or six, these things -- you know, give me a top age five,
12 I can make him -- pre-scholar kinds of things, and that's just
13 biologically wrong, which is very optimistic for people in my
14 business, that from the biology standpoint, the brain is very
15 changeable, you know, through, you know, much of a life,
16 certainly the first three decades.

17 Q. And so I take it at age 19, the brain is still a work in
18 progress?

19 A. Yes. I think a work in progress but not a damaged or
02:45 20 defective brain.

21 MS. CLARKE: Thank you, Dr. Giedd. Ms. Pellegrini may
22 have some questions.

23 MS. PELLEGRINI: I may.

24 CROSS-EXAMINATION

25 BY MS. PELLEGRINI:

1 Q. Good morning, Dr. Giedd.

2 A. Good morning.

3 Q. My name is Nadine Pellegrini.

4 Dr. Giedd, when you first started to explain what your
5 position was and what your job experience was to Ms. Clarke,
6 you mentioned that you were a child psychiatrist, correct?

7 A. Yes.

8 Q. And you also said something about -- I don't know if you
9 said "specialization," but you said "brain imaging and
02:46 10 behavior."

11 A. Yes.

12 Q. All right. So would it be fair to say that, with respect
13 to the science of brain imaging, one needs to look at behavior
14 as well?

15 A. Not only "as well"; predominantly, I think.

16 Q. So metaphorically speaking, you can no more separate the
17 brain from the person than you can separate a brain imaging
18 from behavior of the person, correct?

19 A. Yes. But the behavior is the more direct observation.

02:47 20 Q. All right. So that if you don't have, for example, the
21 measurements that you were talking about when looking at a
22 brain scan and development, the best way of determining
23 maturation would be behavior?

24 A. Even with -- even with the metrics, yes.

25 Q. Yes. And so, for example, when you were asked by

1 Ms. Clarke, you know, what have we learned about brain
2 development, we've learned a lot in the last decade, two
3 decades or so. I think that was your answer, correct?

4 A. Yeah, 20, 25 years.

5 Q. And it's changed a lot; but what you have also seen, have
6 you not, is the fact that sometimes trying to put an overlay of
7 science into another form, such as law or a courtroom, isn't
8 always a perfect fit, correct?

9 A. Correct.

02:48 10 Q. And even in, for example -- no offense, folks -- but
11 popular media -- you know, for example, awhile back there was a
12 whole trend toward, you know, playing Mozart to the baby while
13 it's still in utero. And that came from where the science was
14 looking at that particular point in time with respect to
15 influences upon the development of the child, correct?

16 A. Correct. Which turned out not to hold up, but --

17 Q. Right. So all those Mozart playing was for naught.

18 But, also, would you also agree with me that with respect
19 to what you're learning in your field, with respect to brain
02:48 20 imaging and what people know about behavior, I mean, in
21 people's lives, they already can, under many circumstances,
22 judge and look at behavior themselves, correct?

23 A. Correct.

24 Q. So that, for example, when people say things like, "Oh,
25 you know, she was born an old soul," or, "There's an old head

1 on young shoulders," that's because they're seeing something in
2 that person's behavior that relates to what seems like a mature
3 decision-making?

4 MS. CLARKE: That may call for speculation, unless the
5 doctor knows.

6 THE COURT: You may answer it if you're able to.

7 THE WITNESS: I'm not sure I understand the question.

8 BY MS. PELLEGRINI:

9 Q. I guess what I'm asking you is if, in fact, you need
02:49 10 behavior to look at the whole picture of a person and brain
11 imaging won't tell you the whole story, people who are not in
12 your field can also look at others' behaviors, and they can
13 make a determination for themselves whether they're mature or
14 immature, another person that they're looking at is mature or
15 immature?

16 A. Yes.

17 Q. And that, again, will be based upon the behavior that they
18 would have seen?

19 A. Correct.

02:50 20 Q. All right. And you yourself have done that, correct?

21 A. Correct.

22 Q. All right. For example, in one of your many articles that
23 you talked about, you indicated that sometimes you're asked to
24 look at whether or not -- taking a brain scan and looking at
25 somebody's prior behaviors. And I think the example was a

1 young person jumping into a car and driving off with it. Do
2 you remember that?

3 A. Yes. Yes.

4 Q. All right. And your view was it's looking backwards?

5 A. Exactly. Yeah.

6 Q. Because the behavior has already occurred?

7 A. Yes.

8 Q. But also because you can look at that behavior, and
9 without a brain scan you can say, "Okay. That's impulsive
02:50 10 behavior."

11 A. Yes. Just to elaborate on that a bit, so the question
12 was, "Is this 12-year-old impulsive? Can you do a brain scan
13 to prove it?" And I said, "Well, he just, you know, jumped in
14 a police car and took off. He's impulsive." That's the thing.
15 The brain scan would, you know, not be any more certain than
16 that. It would be more colorful and, you know, more aesthetic,
17 probably. But to me it's backwards, that the brain images are
18 only a loose indication of possible behaviors, but the behavior
19 itself is --

02:51 20 Q. Is key?

21 A. -- is the key, correct.

22 Q. As a matter of fact, speaking of aesthetically colorful --

23 MS. PELLEGRINI: May we have 3434 up again for
24 everyone, your Honor?

25 THE COURT: Your feed?

1 MR. BRUEMMER: Yes, your Honor.

2 BY MS. PELLEGRINI:

3 Q. Is that in front of you, Dr. Giedd?

4 A. Yes.

5 Q. So this is a very colorful picture, correct?

6 A. Yes.

7 Q. And, in fact, you also said at one point colorful brain
8 scans introduced in courts can be almost irrationally
9 persuasive?

02:52 10 A. Correct.

11 Q. And you went on to say that --

12 A. And out of court.

13 Q. And out of court.

14 And you went on to say that it's very seductive to have an
15 aesthetically beautiful brain scan -- by the way, beauty being
16 in the eye of the beholder -- that brings a sense of certainty
17 to something that really isn't certain.

18 Those are your words?

19 A. I stand by them, yes.

02:52 20 Q. Okay. And, in fact, what you went on to say was, in

21 trying to explain how these -- behavior and imaging work

22 together, that human behavior is much more nuanced and complex
23 than what some of these images are showing.

24 A. Correct.

25 Q. And, in fact -- so taking that, that -- the nuanced and

1 complex aspect of human behavior, and linking that with what
2 you said several times was an average when you're doing your
3 studies, it's fair to say that within this range and spectrum
4 of, say, four to 22, you really don't know where any particular
5 individual might be at any one point in time?

6 A. Correct.

7 Q. All right. And, in fact, it's not only that the brain
8 imaging shows highly variable changes between -- for people,
9 but also, I believe this is something else that you might have
02:53 10 said -- and, by the way, this would have been at a symposium
11 called "The Brain on Trial"?

12 A. Ah, yes. Yes.

13 Q. Okay. And do you recall indicating that "What's difficult
14 is applying this" -- "this" being the adolescent brain
15 maturity -- "is that there are so many exceptions to the
16 rule -- there are many mature teens and, likewise, immature
17 people in their 20s and 30s -- so the real challenge is going
18 from group averages to individual prediction or
19 characterization"?

02:54 20 A. And we haven't, you know, met that challenge.

21 Q. Okay. All right. And that's just the nature of research
22 and science at this particular point in time?

23 A. Yes. I think that being able to get to the individual
24 level is one of the big -- the big goals, but I think we're
25 farther away from it than people realize. So one of the

1 examples is to say that men are taller than women, so
2 statistically that's true. If you take 100 men on average, 100
3 women on average, the men will be taller.

4 The effect of that size is about twice as big as the
5 brain-imaging differences. And so if you were to just look
6 around the room and say -- if we went into a high school and
7 said, "Everybody above five six, this locker room; everybody
8 below, this other locker room," well, that's ridiculous. Why?
9 Well, there's -- there's too many exceptions to the rule, just
02:54 10 looking at it. And so that's twice the difference of the brain
11 imaging.

12 So I think that's, you know, a key point to make in terms
13 of it would be very hard to go from a brain scan of a person
14 and predict how mature, impulsive. So it's only with group
15 averages that, even if the 14-year-old is mature, they're going
16 to get even more mature, you know, as that individual goes
17 through life. That's -- that's pretty strong in terms of that
18 people get better and better at choosing the larger, later
19 reward as -- as they mature. But it only holds at this group
02:55 20 level. To say, like in 25-year-olds, as a group, we'll make
21 decisions differently than 16-year-olds as a group, but that
22 would be as far as I could push the science.

23 Q. So that, at the end of the day -- and I hate to sound like
24 a commercial, but age might be just a number when we're talking
25 about the level of maturity of an individual?

1 A. Yes. I mean, there's many aspects of maturity and huge
2 individual variation. If that's what you mean, I agree.

3 Q. And so, therefore, also -- you were saying a few times
4 that it's not necessarily that things are broken or absent when
5 you're talking about the connections in the brain?

6 A. Correct.

7 Q. But that they're going to work better, maybe, later on.
8 There's no guarantee of anything, correct?

9 A. Correct. But on average, people, you know, will get more
02:56 10 life experiences, they'll make better decisions, they'll be
11 able to control impulses better. Like you said, you know, not
12 everybody, but that's a pretty strong direction as well, like
13 most people, you know, will move in that direction unless they
14 have, you know, damage to their brain or other things.
15 Illnesses --

16 Q. But conversely -- I'm sorry. I didn't mean to cut you
17 off.

18 A. I'm sorry. Or -- or people may develop an illness, such
19 as schizophrenia or bipolar disorder, that might, you know,
02:57 20 affect decision-making and such. But in health, that most
21 people will progress on that dimension.

22 Q. So in answer to one of Ms. Clarke's questions about the
23 maturation of the brain, she asked you about a person's ability
24 to plan and to understand consequences. But am I right in
25 saying that the age of a person and the brain maturation does

1 not present a barrier? A person can, in fact -- an individual
2 within this larger group -- can plan, can premeditate, and can
3 understand consequences of his or her actions?

4 A. Correct. Even -- even younger, I would say, as well.

5 Q. Younger -- I'm sorry. Younger than --

6 A. Even younger than -- than 19 years.

7 Q. Than 19, right? Because there are, you mentioned,
8 14-year-old girls who understand, who are mature?

9 A. But even younger, below age ten, in the right settings,
02:58 10 they can, you know, do quite well with planning and
11 consequences.

12 Q. And one of the other things that you talked about with
13 Ms. Clarke was the possible influences upon the maturation or
14 development of the brain, correct?

15 A. Yes.

16 Q. And there was a time that you were asked -- and I think it
17 might have been the same conference, if you would just give me
18 a minute -- about the fact that within the time period from,
19 say -- I think it might have been 2001 to 2011 -- all of the --
02:58 20 all of the statistics relating to risky behavior for juveniles
21 declined, whether it was unprotected sex, teenage pregnancies,
22 crime, things like that?

23 A. Yeah, the context for that was the Internet, and that the
24 amount of time spent with violent video games from 2002 to that
25 time went up four-fold, but the degree of violence is only

1 limited by, you know, our imagination. Coming across sexual
2 content, it's almost impossible not to, just in the ads and
3 such. So one would have anticipated, you know, this would be
4 unraveling the moral fabric of our nation and such. But all of
5 the statistics -- unwanted teen pregnancies, sexually
6 transmitted disease, all the indices, 49-year low. Real world,
7 you know, violence, 47-year lows. It was more of a puzzlement
8 to us because if it had been the opposite, we would have been
9 all over the cause.

02:59 10 Q. That's what I'm getting at. So I think the question that
11 might have been -- this would have been -- again, this was a
12 talking point with Sarah MacDonald in September of 2012 at the
13 University of New South Wales symposium.

14 A. Uh-huh. I remember.

15 Q. All right. And I believe you were a guest speaker at that
16 point. And one of the questions was about the explosion of
17 social media and the challenges of modern society changing,
18 apparently, the way the brain functions. You had mentioned,
19 for example, that reading may not have as great an effect, and
03:00 20 it seemed to be that reading wasn't a natural activity in that
21 regard. Is that correct?

22 A. It pains me to say that as an educator, but yes.

23 Q. And that -- I believe this is something else that you
24 mentioned at that time. Ironically, or not ironically, the
25 data for the last 47 years, since they've been keeping score,

1 unwanted teen pregnancies are at an all-time low; abortion is
2 at an all-time low; sexually transmitted disease, all-time low;
3 murders and other violent crime among adolescents, all-time
4 low. It's gone in exactly the opposite direction. And the
5 moderator said, "Well, so it's safe to play on the Internet,"
6 and your response was, "I am baffled."

7 So there are things that, even as someone with all of your
8 experience and what science can tell you, remains a mystery.

9 A. Well, I mean, brain science is a very humbling business in
03:01 10 terms of -- had it since I can remember, and, yeah, I think
11 we're just scratching the surface.

12 Q. And I just had one final question. In going back to the
13 brain, the measurements that would be taken with respect to
14 getting an image like it's on our screen right now, that within
15 one of your papers -- and if you'd give me a moment -- and I
16 confess, it's not something I subscribe to -- but *Neuron*
17 *Review*, the article was "Structural MRI of Pediatric Brain
18 Development: What We've Learned and Where We Are Going."

19 A. Durston or --

03:01 20 Q. It was you and Judith Rapoport.

21 A. Oh, me and -- okay.

22 Q. All right? And one of the striking things was, if you
23 recall, that all of the data presented regarding brain
24 measurement must be interpreted in light of the strikingly high
25 variability of brain-size measurements across the individuals.

1 And in that, you add -- your co-author cited another earlier
2 study, so it was known even earlier, that there was a
3 strikingly high variability even within the group that you are
4 taking the averages from. Correct?

5 A. As a concrete example, so we have two ten-year-old,
6 totally healthy, doing-great boys in the study whose brains
7 are -- twice -- one's twice as big as the other, and both
8 doing -- doing fine.

9 Q. And then, finally, one of the conclusions you came to in
03:02 10 the paper -- or, actually, I think one of the sort of
11 parameters was that going from group-average differences to
12 individual use is one of the preeminent challenges of
13 neuroimaging. You agree with that?

14 A. So one of the goals when I started was to be able to do a
15 brain scan to see if somebody had autism or ADHD or
16 schizophrenia, and 25 years later, no. So that, as you
17 indicated, we go to the behavior. That's the -- the gold
18 standard in terms of these things. And so we're not -- we're
19 not close, frankly. We're not right around the corner; you
03:03 20 know, that it's going to be hard for a while. We'll have to
21 actually talk to people. We'll actually have to understand
22 behaviors.

23 The, I guess, utility of it has been sort of these trends
24 that, you know, in aggregate, the brain is incredibly
25 changeable during the second decade, and it -- the development,

1 the way we usually think of it, is protracted, in that the
2 brain stays that way, you know, longer than any of us, I think,
3 thought at the beginning.

4 Q. But it does constantly change until we die?

5 A. You know, I guess ready for prime time in the sense of --
6 so as a -- as a psychiatrist, if someone comes to see me, do I
7 get a brain scan? No. I listen to them. I hear their family,
8 their story. And I'd be the first in line if that, you know,
9 wasn't the case. And, yeah, I think that we have to be careful
03:04 10 about the colors in terms of --

11 Q. Literally.

12 A. Yeah.

13 MS. PELLEGRINI: Thank you very much. I have no
14 further questions.

15 THE COURT: Ms. Clarke?

16 MS. CLARKE: Thank you, Dr. Giedd.

17 THE COURT: All right. Dr. Giedd, thank you. You my
18 step down.

19 (The witness is excused.)

03:04 20 MR. BRUCK: We'll call Sonya Petri.

21 THE COURT: May I see counsel briefly?

22 MR. BRUCK: Yes.

23 (Discussion at sidebar and out of the hearing of the
24 jury:)

25 THE COURT: I don't think it's on the witness/exhibit

1 list, but I think I've been advised that one of the issues
2 might be the Zubeidat emails.

3 MR. BRUCK: Exactly.

4 THE COURT: Those will be excluded, okay? I think
5 they're cumulative. I think the witness is not unavailable.

6 MR. WEINREB: Your Honor, we just wanted to put on the
7 record that in light of the relative blandness of his
8 testimony, we're withdrawing our request for an instruction
9 about the lack of the enforceability of the oath or --

03:05 10 THE COURT: Okay. Thank you. That makes it easy for
11 me.

12 (In open court:)

13 MR. BRUCK: Sonya Petri.

14 THE COURT: Good afternoon.

15 (Pause.)

16 SONYA PETRI, previously sworn

17 DIRECT EXAMINATION

18 BY MR. BRUCK:

19 Q. Good afternoon, Ms. Petri.

03:06 20 A. Good afternoon.

21 Q. You have been previously sworn; you're a paralegal with
22 the Federal Defender's Office?

23 A. Correct.

24 Q. And you have read documents to the jury before in this
25 trial, and you're here again to do that now?

1 A. Correct.

2 MR. BRUCK: If it would please the Court, we would
3 like to move into evidence the remainder -- and I understand
4 there is no objection from the government -- the remainder of
5 the medical records of Anzor Tsarnaev, those being Exhibits
6 3509B, which are Mass. General records; 3509C, which are from
7 Spaulding rehabilitation; 3509D, which are also Mass. General
8 records; and 3509J, which are the remainder of Mr. Tsarnaev's
9 psychiatric and neurological records from 2005 until 2012.

03:08 10 That is, this completes the records that were partially
11 introduced yesterday when Dr. Niss testified.

12 THE COURT: All right. And there is no objection to
13 those being entered?

14 MR. CHAKRAVARTY: No objection.

15 THE COURT: All right.

16 (Defense Exhibit Nos. 3509B, 3509C, 3509D, and 3509J
17 received into evidence.)

18 MR. BRUCK: These are extremely voluminous, and rather
19 than go through the records themselves, we would move in at
03:08 20 this time Exhibit 3522, which is Ms. Petri's summary, extracts
21 from the records.

22 MR. CHAKRAVARTY: Your Honor, I don't know if it's
23 changed since when I saw it, I think, a couple of days ago, but
24 if it's that version, I have no objection.

25 THE COURT: Okay. In principle, there's no objection;

1 it's just a --

2 MR. CHAKRAVARTY: Correct.

3 THE COURT: Okay.

4 (Defense Exhibit No. 3522 received into evidence.)

5 MR. BRUCK: And if we could have 3522 displayed to the
6 jury, your Honor. Thank you.

7 BY MR. BRUCK:

8 Q. Ms. Petri, you have in front of you Exhibit 3522 on the
9 screen?

03:09 10 A. Yes, it appears so.

11 Q. And can you tell us what -- this is a document of about
12 how many pages?

13 A. I believe it's four pages.

14 Q. I'm sorry. 3522. Oh, I'm terribly sorry.

15 THE COURT: This looks like a document used with
16 Dr. Niss.

17 MR. BRUCK: No, it should have been 3523. My
18 apologies.

19 MS. CLARKE: Your Honor, I believe 3522 went into
03:10 20 evidence yesterday.

21 MR. CHAKRAVARTY: No, actually, that relates to --

22 MR. BRUCK: No, no, I don't think so.

23 The -- I had the number -- I had -- that's the exhibit
24 we wanted. 23. My apology. I had the numbers reversed.

25 THE COURT: So you want 23?

1 MR. BRUCK: Yes. Yes, please. 22 is not coming into
2 evidence. We are not offering it.

3 THE COURT: Is the document that's on the screen --

4 MR. BRUCK: This is the correct document, and this is
5 23.

6 THE COURT: Okay.

7 MR. BRUCK: Thank you.

8 (Defense Exhibit No. 3523 received into evidence in
9 lieu of Exhibit No. 3522.)

03:11 10 BY MR. BRUCK:

11 Q. Ms. Petri, can you tell us what Exhibit 3523 is?

12 A. Yes. It's a summary of treatment records for Anzor
13 Tsarnaev.

14 Q. And did you prepare this summary?

15 A. I did.

16 Q. And is this based on his medical records that have just
17 been moved into evidence?

18 A. It is.

19 Q. What I would like to do, we're not going to read the
03:11 20 entire document. The jury will have it. But I would like to
21 call up a few items and ask you to read them for us, please,
22 with the date and the notes, diagnosis.

23 I should ask you: In preparing this summary, did you go
24 through the records and extract the complaint -- that is to
25 say, what Mr. Tsarnaev told the physicians at each of these

1 medical appointments -- the diagnosis that was given at the
2 conclusion of the interaction, and the medications that were
3 prescribed?

4 A. Yes, I did.

5 Q. And that's what this summary actually is?

6 A. Yes, it is.

7 Q. Okay. Let me get this a little better.

8 A. I can read it that way.

9 Q. You can -- okay. Go ahead.

03:12 10 A. So on May 15th, 2006, Dr. Martirosyan notes that patient
11 returns to treatment after stopping all medications. Symptoms
12 returned about a month ago, and include panic attacks,
13 insomnia, nightmares, memory problems and concentration,
14 unstable mood. Feels differently at different times of the
15 day. Thinks he hears someone calling his name and feels
16 presence next to him. The diagnosis was PTSD, panic attacks
17 with agoraphobia. And the medications prescribed were Lexapro
18 and Trazodone.

19 Q. Thank you.

03:13 20 All right. And the next page?

21 A. This is March 12th, 2007. Provider is Dr. Martirosyan.
22 Notes: The patient and wife are at the appointment. Patient
23 reports feeling very anxious. Unable to control himself and
24 wants to cry. Has frequent awakenings at night with
25 flashbacks. Wife confirms his complaints and seems very

1 supportive and caring. The diagnosis is PTSD and in moderate
2 distress. Medications prescribed is Zyprexa, Lexapro, Ativan
3 and Ambien.

4 Q. Thank you. The next page, please?

5 A. On January 13, 2009, Dr. Mashkovich -- that's
6 M-A-S-H-K-O-V-I-C-H -- notes that patient reports having
7 auditory hallucinations (voices screaming his name or
8 whispering) and some visual hallucinations (little lizard-like
9 creatures) for past two to -- sorry, part three to four weeks.
03:14 10 Says they are more intrusive than before. Inpatient admission
11 advised, but patient wants to see if medication can help.
12 Believes being in own home more beneficial mentally. The
13 diagnosis is psychosis NOS, and the medications is Trilafon.

14 Q. Thank you. Next page?

15 A. On August 8th, 2009, at around 10 p.m., Anzor is assaulted
16 and battered at Arbat Restaurant. On August 9th, 2009, at 2:45
17 a.m., Anzor arrives by ambulance to the Cambridge Hospital
18 where his condition deteriorates and he is intubated. On
19 August 9th, 2009, at 5:30 a.m., a CT scan shows acute left
03:15 20 parietal skull fracture depressed about eight millimeters
21 associated with subarachnoid hemorrhage, pneumocephalus
22 involving posterior parietal lobe and extending to left
23 posterior convexity, mild cerebral edema and mild
24 intervertebral disk space narrowing noted at C5-C6. And the
25 diagnosis is subarachnoid hemorrhage, depressed skull fracture,

1 and pneumocephalus.

2 Q. Next page? Oh, I'm sorry. Further on down?

3 A. On August 11th, 2009, Anzor has surgery for the repair of
4 his skull fracture at 7:10 p.m. And on August 12th, 2009,
5 Anzor observed to have alternated motor function, decreased
6 recall, altered gait pattern -- there's a spelling error there;
7 it should be G-A-I-T -- impaired mental and cognitive function,
8 and impaired visual and sensory function.

9 Q. Thank you. Next page?

03:16 10 A. On August -- I'm sorry -- October 15th, 2009, the provider
11 is Dr. Eydelman who notes: The patient reports unsteady gait,
12 visual changes, tremor, auditory hallucinations, multiple
13 voices screaming his name, and visual hallucinations (animal
14 faces). "I am scared."

15 Depressed, anergastic, irritable, angry, and talkative.
16 And the diagnosis is psychosis NOS. Medications prescribed are
17 Cogentin, Risperdal and Ambien.

18 Q. Next page, please?

19 A. On May 6th, 2010, the provider is Dr. Eydelman who notes:
03:17 20 The patient reports headaches, decreased vision, hearing
21 problems, nosebleeds, depressed mood, flashbacks, confusion at
22 times. Continues to experience auditory and visual
23 hallucinations (multiple voices) and paranoid ideations. The
24 diagnosis is psychosis NOS and organic delusional disorder NOS.
25 Medications: Cogentin, Risperdal, Ambien and Neurontin.

1 Q. Thank you. Next page?

2 A. On October 25th, 2010, Dr. Fridman of neurology notes:
3 New patient intake. General symptoms include pain in left side
4 of head, hearing loss, numbness in face, decreased vision
5 lasting 30 minutes with gradual disappearance (several times a
6 week). Neurological symptoms include headaches, syncopal
7 episodes, tremors, migraines, vertigo, tingling, numbness,
8 seizures, loss of feeling/power, loss of consciousness,
9 confusion, weakness, insomnia, visual changes, dizziness,
03:19 10 memory loss, gait abnormality, sleep problems, headache. No
11 fainting spells. No sciatica. The diagnosis is chronic
12 posttraumatic headache, depression with anxiety, and
13 hyperlipidemia. The medications are Cogentin, Risperdal,
14 Neurontin and Ambien.

15 Q. Two pages further on, please?

16 A. On February 17th, 2011, the provider is Dr. Smurawska, who
17 notes: Anzor Tsarnaev reports feeling quite overwhelmed.
18 Appears depressed, tearful, having difficulty functioning,
19 upset with minor things. "If I am not getting better, my wife
03:20 20 would divorce me." Agreed that meeting together with wife next
21 week would be good idea. Feeling weak physically, refused
22 inpatient stay. Diagnosis is psychosis NOS, PTSD, organic
23 delusional disorder NOS. Medications are Zyprexa, Risperdal,
24 Cogentin, Ativan and amitriptyline.

25 Q. Next page, please?

1 A. On September 23rd, 2011, the provider is Dr. Smurawska who
2 notes: The patient came in -- sorry -- patient came for
3 following up -- or follow-up with wife. Pleasant and
4 cooperative. Feels better but easily overwhelmed and
5 fluctuating. The diagnosis is psychosis NOS, PTSD, organic
6 delusional disorder NOS, R/O mood disorder secondary to brain
7 injury. Medications are amitriptyline and Ativan.

8 Q. And the last page?

9 A. On April 3rd, 2012, a letter from Dr. Smurawska from the
03:21 10 St. Elizabeth's Medical Center addressed to whom it may
11 concern. It says: Patient suffering from mental illness. Not
12 able to work. Needs constant supervision and support.

13 And a visit note from April 3rd, 2012. Dr. Smurawska
14 notes: Patient stopped coming to clinic six months ago.
15 Divorced his wife. Stopped taking all meds. Psychotic. Will
16 start Haldol and Depakote today. Very close follow-up. And
17 diagnosis is psychosis NOS, PTSD, organic delusional disorder
18 NOS, R/O mood disorder secondary to brain injury. Medications
19 are Haldol, Cogentin and Depakote.

03:22 20 MR. BRUCK: Thank you, Ms. Petri.

21 That's all we have.

22 THE COURT: That's all? Thank you.

23 THE WITNESS: Thank you.

24 (The witness is excused.)

25 MS. CONRAD: The defense calls Jennifer Carr-Callison.

1 JENNIFER CARR-CALLISON, duly sworn

2 THE CLERK: Have a seat. State your name, spell your
3 first and last name for the record, keep your voice up and
4 speak into the mic.

5 THE WITNESS: Okay. My name is Jennifer Callison.
6 It's J-E-N-N-I-F-E-R, C-A-L-L-I-S-O-N.

7 DIRECT EXAMINATION

8 BY MS. CONRAD:

9 Q. Good afternoon, Ms. Callison.

03:23 10 A. Good afternoon.

11 Q. What kind of work do you do?

12 A. I am the transition specialist for the office of special
13 education in the Winchester Public Schools.

14 Q. And what is a transitional specialist?

15 A. My job kind of is to help students who have disabilities
16 transition from high school to adult life.

17 Q. And how long have you been with the Winchester school
18 system?

19 A. This is my first school year with them.

03:24 20 Q. Where did you work before there?

21 A. The Cambridge Public Schools.

22 Q. And before -- where did you go to school?

23 A. I went to school at the University of Massachusetts Boston
24 and to Norwich University.

25 Q. And are you currently -- in addition to working for the

1 Winchester school system, are you also currently going to
2 school yourself?

3 A. I am.

4 Q. And what are you studying?

5 A. I'm studying for my Ph.D. in leadership in urban schools
6 through the University of Massachusetts at Boston.

7 Q. And before you went into the field of education, what kind
8 of work did you do?

9 A. I was the director of marketing and promotions for
03:24 10 multiple major market radio stations in both Massachusetts and
11 California.

12 Q. And which radio station did you work for in Boston?

13 A. WBCN and then formerly WBOS.

14 Q. And were you ever a disk jockey?

15 A. I was.

16 Q. Turning to the Cambridge school system, during what years
17 did you work in the Cambridge school system?

18 A. I started working there in 2007 and finished working there
19 in June of 2014.

03:25 20 Q. And in the school year 2010 to 2011, what was your
21 position in the Cambridge school system?

22 A. I was the transition coordinator for the district.

23 Q. And where specifically did you work? What was your place
24 of work?

25 A. I worked at the high school, at Cambridge Rindge and Latin

1 school.

2 Q. And at that time, was your last name the same?

3 A. No, it was not.

4 Q. What was it at that time?

5 A. It was Garcia.

6 Q. So tell us a little bit more about what your
7 responsibilities were when you were working at -- in the
8 Cambridge system, specifically, in the 2010-to-2011 school
9 year.

03:25 10 A. I was the transition specialist for the district, so I
11 worked in the office of special education. I worked with
12 students who were 14 to 22 who had a variety of disabilities to
13 help them plan for the transition from adult -- from high
14 school to adult life, so really looking towards employment
15 opportunities, education and social and community relations,
16 connecting students to state agencies, also connecting students
17 and families to day programs and other supports that may be
18 useful to them when they leave school.

19 Q. Can I ask you just to slow down just a little bit for the
03:26 20 court reporter.

21 A. Sorry. Of course.

22 Q. When -- in that position, did you also serve as
23 advisor -- faculty advisor to a student group?

24 A. Yes, I was the faculty advisor to the CRLS chapter of Best
25 Buddies.

1 Q. What is Best Buddies?

2 A. Best Buddies is an international organization, they have
3 chapters at high schools, elementary schools, middle schools
4 and colleges as well as other programs they run. The program
5 that I supervised specifically was a social club at the high
6 school level, which was a chapter of Best Buddies that ran for
7 students with and without intellectual and developmental
8 disabilities.

9 Q. And what role -- what relationship did the Best Buddies
03:26 10 program have to your responsibilities as -- in the transitional
11 assistance?

12 A. They weren't interconnected necessarily, but as part of my
13 role, I was the faculty advisor, and many of my students who I
14 was transitioning out also participated in Best Buddies.

15 Q. What do you mean by "transitioning out"?

16 A. Students that were preparing to leave high school and go
17 into adult life to kind of help gain social skills, they would
18 join Best Buddies to make new friendships, participate in
19 social activities both on and off campus, and I would oversee
03:27 20 that club.

21 Q. So what were some of the activities of Best Buddies?

22 A. We would alternate activities on campus and off campus.
23 So around Christmastime we did an annual gingerbread
24 house-making competition on campus for students. Then off
25 campus we would go out to lunch, go out to dinner. We went to

1 the Best Buddies prom. We had a year-end banquet. We had
2 different events that were designed to foster social skills and
3 development and create friendships for students with and
4 without disabilities in one setting.

5 Q. And in the 2000 -- and do you know Jahar Tsarnaev?

6 A. I do.

7 Q. And how do you know him?

8 A. He was a member of our club.

9 Q. In what year?

03:27 10 A. 2010 to 2011.

11 Q. And is this -- by the way, for students who participate,
12 students like Jahar, is this an activity that they get academic
13 or school credit for?

14 A. No, they do not.

15 Q. And, in fact, do they -- did Cambridge at the time have a
16 community service requirement?

17 A. We did.

18 Q. And would this fulfill the community service requirement?

19 A. It would not.

03:28 20 Q. And I take it it's purely voluntary?

21 A. Yes.

22 Q. And what types of students -- I'm talking about students
23 who did not have developmental challenges. What types of
24 students generally would participate in the Best Buddies
25 program at Cambridge Rindge and Latin?

1 A. Overall, the students that participated were typically
2 students that were involved in other sports, students that were
3 doing well academically, students that wanted to make more
4 friends, students that wanted to be part of a club that was
5 inclusive and that was designed to have fun and be social.

6 Q. I'm going to show you what's been marked for
7 identification -- I don't know if the government has an
8 objection -- as 3507-068.

9 MS. PELLEGRINI: May we see that on the screen,
03:29 10 please?

11 No objection, your Honor.

12 MS. CONRAD: We'd offer that.

13 THE COURT: Admitted.

14 MS. CONRAD: Thank you.

15 (Defense Exhibit No. 3507-068 received into evidence.)

16 BY MS. CONRAD:

17 Q. Do you see that photograph on the screen?

18 A. I do.

19 Q. And can you tell us if you recognize what -- when and
03:29 20 where that photograph was taken?

21 A. That was our -- I believe our end-of-the-year banquet at
22 Ryles jazz club in Cambridge.

23 Q. And do you see Jahar in that picture?

24 A. I do.

25 Q. And you just -- you can just touch the screen and draw a

1 circle around it with your finger.

2 A. (Witness complies.)

3 Q. And where was that held?

4 A. That was at the Ryles jazz club.

5 Q. Now, was that the only -- I'm sorry. Do you see Jahar in
6 the courtroom today?

7 A. Yes, I do.

8 Q. Was that the only event that Jahar attended?

9 A. No.

03:30 10 Q. Can you tell us what some of the other events were that he
11 attended?

12 A. The Best Buddies prom at Babson College, which was held by
13 Best Buddies, which our chapter went to. I believe there were
14 other on-campus events and off-campus events that Jahar did
15 attend.

16 Q. And, in fact, are there events that are held on a regular
17 basis, say once a month or once a week?

18 A. The events that we had were once a month, third Friday of
19 the month, typically from 6 to 8 p.m.; and we also had a weekly
03:30 20 lunch event where students could meet during their lunchtime
21 and sit together and have lunch, and that was typically on
22 Wednesdays.

23 Q. And you mentioned the prom. Can you tell us about the
24 prom?

25 A. The Best Buddies prom was held at Babson College. It was

1 run by Best Buddies International. They had the prom for any
2 student chapter in Massachusetts who wanted to attend. For a
3 fee we could buy tickets and take students to the Best Buddies
4 prom.

5 Q. And what would happen at the prom?

6 A. It was a typical dance. Students got dressed up. They
7 went -- they had a dee-jay. They had pizza. They had music.
8 They did different kind of activities, just they crowned a king
9 and queen group of different peer buddies and buddies who were
03:31 10 together. So it was more of just kind of a fun social event
11 where kids danced, and it was a really good time.

12 Q. What was that like for the kids?

13 A. Wonderful. I mean, it was the kind of event where, for
14 many of the students who I worked with who had developmental
15 disabilities, they might not get the chance to go to a prom, so
16 this was an opportunity to go and have a great time with your
17 friends from school, celebrate and, you know, really just
18 participate in a great social event.

19 Q. What are the expectations for the students -- the students
03:31 20 without disabilities who participate? I mean, do they just go
21 and eat the free pizza and hang out with their friends and
22 leave?

23 A. No, the expectation of all members of the club is that
24 you're there to help create an inclusive environment for
25 students with developmental disabilities. The idea is that

1 you're there to participate in the social event, behave
2 respectfully, be part of the team of the Cambridge Rindge and
3 Latin Best Buddies. Students are expected to have a good time
4 and be respectful.

5 Q. Other than seeing him in this picture, do you remember
6 Jahar?

7 A. I do.

8 Q. What do you remember about him?

9 A. Like all students in the club, he was kind. He was
03:32 10 respectful. He came to the events. He was nice to every
11 student that he encountered. He was a good member of the club.

12 Q. And do you remember anything about how he was interacting
13 with the students who had intellectual challenges?

14 A. Yeah, he was very nice to them.

15 Q. Did he ask you for college recommendation?

16 A. He did not.

17 Q. Is that something that some of the students do?

18 A. Yes.

19 Q. And as far as attending the events, who pays for the
03:32 20 students to attend?

21 A. It was funded by students. Typically they would pay for
22 tickets. We also had a grant that we got to pay for some of
23 the events, and the school funded the bus that took us to the
24 Best Buddies prom.

25 Q. Is there anything -- at some point you learned that Jahar

1 was involved in the marathon bombing, correct?

2 A. Yes.

3 Q. And was the Jahar -- was that consistent with the Jahar
4 that you knew?

5 MS. PELLEGRINI: Objection.

6 THE COURT: Overruled.

7 You may answer. You may answer.

8 THE WITNESS: I don't believe that it was. The
9 student that I worked with in my club is the student that I am
03:33 10 speaking on today.

11 BY MS. CONRAD:

12 Q. And could you imagine that person --

13 MS. PELLEGRINI: Objection.

14 THE COURT: No, go ahead.

15 You can follow up.

16 BY MS. CONRAD:

17 Q. Could you imagine that person committing the marathon
18 bombing when you knew him in 2011?

19 A. No.

03:33 20 MS. CONRAD: I have nothing further.

21 MS. PELLEGRINI: Just a second, your Honor.

22 (Pause.)

23 MS. PELLEGRINI: Nothing, your Honor.

24 THE COURT: All right, Ms. Callison. Thank you. You
25 may step down.

1 (The witness is excused.)

2 MS. CLARKE: Your Honor, I wonder if we should take
3 the lunch break early.

4 THE COURT: Let me just see you briefly.

5 (Discussion at sidebar and out of the hearing of the
6 jury:)

7 THE COURT: General --

8 MS. CLARKE: A test?

9 THE COURT: No, just general orientation.

03:34 10 MS. CLARKE: Yes. Next would be Eric Traub and then
11 Kevin Roche and then the ADX.

12 THE COURT: How long do you think Bezy will be?

13 MR. BRUCK: Not terribly long, maybe 45 minutes. But
14 we have a legal matter. There's a motion respecting this
15 business of whether or not putting in the SAMs opens the door
16 to ESPN.

17 THE COURT: Okay.

18 MR. BRUCK: So we'll take that up.

19 MR. WEINREB: Your Honor, for the record, it's not a
03:35 20 matter of putting in the SAMs that opens up the door to ESPN,
21 since these are now all being published. I think it's
22 important that the record reflect that the argument that if the
23 defense wants to put on a portrayal of what life in ADX will be
24 like, then the government is entitled to make sure it's not a
25 one-sided misleading portrayal.

1 THE COURT: All right. I don't want to --

2 MS. CLARKE: I was just asking for an early lunch
3 break.

4 THE COURT: I just want to know what's coming. So
5 he'll be on and off today?

6 MR. WEINREB: Yes.

7 THE COURT: Because I assume he's remote, and he'll go
8 back to wherever he's come from.

9 And then?

03:35 10 MS. CLARKE: That's all we had planned for today.

11 THE COURT: You won't get to these others?

12 MS. CLARKE: That's what I call the ADX.

13 MR. BRUCK: We're not exactly sure what our planning
14 is for the rest of them. We're going to see how Mr. Bezy --

15 MS. CLARKE: These four.

16 THE COURT: I see. Okay. All right.

17 MS. CLARKE: Thanks.

18 THE COURT: And then for tomorrow? Just to get a
19 preview. Is there a tomorrow?

03:36 20 MS. CLARKE: Yes, there's a tomorrow, and it will
21 probably be debated with the Court, but there's -- tomorrow we
22 have two witnesses -- potential witnesses left tomorrow, and
23 that would be Vogelsang and Prejean.

24 MR. WEINREB: So we'll be filing a motion in limine
25 after court today to exclude the testimony of Sister Helen

1 Prejean.

2 THE COURT: Okay. All right. So -- fine. We can
3 break for lunch.

4 MS. CLARKE: Thank you.

5 (In open court:)

6 THE COURT: All right. We will take the lunch recess
7 at this point.

8 THE CLERK: All rise for the Court and the jury. The
9 Court will take the lunch recess.

03:37 10 (The Court and jury exit the courtroom and there is a
11 recess in the proceedings at 12:47 p.m.)

12 THE CLERK: All rise for the Court and jury.

13 (The Court and jury enter the courtroom at 2:22 p.m.)

14 THE CLERK: Be seated.

15 MS. CLARKE: Your Honor, the defense would call Eric
16 Traub.

17 ERIC TRAUB, duly sworn

18 THE CLERK: State your name, and spell your first and
19 last name for the record. Keep your voice up, and speak into
05:13 20 the mic so everyone can hear you.

21 THE WITNESS: Eric Traub, E-R-I-C, T-R-A-U-B.

22 DIRECT EXAMINATION

23 BY MS. CLARKE:

24 Q. Mr. Traub, where do you live?

25 A. I live in Washington, D.C.

1 Q. Are you married? Do you have a family there?

2 A. I'm married, and I have a daughter.

3 Q. What do you do for a living?

4 A. I am a software engineer. I work at a small company.

5 Q. In the Washington, D.C., area?

6 A. Yes.

7 Q. Where did you go to college?

8 A. I went to MIT.

9 Q. When did you go there?

05:14 10 A. From 1995 to 1999.

11 Q. Did you have another career before you became a software
12 engineer in D.C.?

13 A. Yes, I did. I was a teacher.

14 Q. And where were you teaching?

15 A. I taught at several schools. I taught at the Commonwealth
16 School in Boston as well as City on a Hill in Boston and
17 Cambridge Rindge and Latin in Cambridge.

18 Q. And is there some intersection between your interest in
19 software and your interest in teaching?

05:14 20 A. Yeah. I originally -- well, software is mostly composed
21 of mathematics; and for several of the years that I was a
22 teacher, I was also a computer science teacher, so I taught
23 both math and computer science and was very interested in the
24 intersection between those two.

25 Q. And your degree at MIT was in?

1 A. I have a bachelor's of science in computer science and
2 engineering.

3 Q. And you told us that you taught at Cambridge Rindge and
4 Latin School. Do you recall the years?

5 A. Yeah. I started there in 2007, and I finished in 2011.

6 Q. Do you know Jahar Tsarnaev?

7 A. Yes, I do.

8 Q. Do you see him here in the courtroom?

9 A. I do.

05:15 10 Q. And when did you -- did you teach Jahar?

11 A. He was my student in 2007, in the fall, and in the fall of
12 2010.

13 Q. So you had him for two -- two semesters or two full years?

14 A. Two semesters.

15 Q. And what did you teach?

16 A. I was his math teacher, so I taught him in Algebra I and a
17 class called Honors Advanced Math Topics, which is a course for
18 seniors in which we look at a variety of topics, like
19 probabilities, statistics, and discrete math.

05:15 20 Q. So you taught him at the beginning of his high school
21 years and at the end of his high school years?

22 A. That's correct.

23 Q. How would you describe Jahar for the jury?

24 A. Jahar was a kind student. He got along great with his
25 peers. I really liked having him in the classroom because he

1 participated. He brought kind of a fun energy to the
2 classroom.

3 Q. Was he outspoken? Quiet? How would you describe him?

4 A. He wasn't outspoken in the sense of being disruptive in
5 the classroom. He was quiet, but he was always, you know,
6 willing to engage in conversation.

7 Q. And did he have a particular group of friends or -- were
8 you aware?

9 A. I didn't know of any particular clique that he hung out
05:16 10 with. In my classroom he seemed to get along -- seeing him in
11 my classroom, he seemed to get along with all the students.
12 Freshman year was a bigger class, and he kept to himself a
13 little bit more as a freshman. There were a few students I
14 know that he hung out with. I know the Silva brothers were in
15 that class, and he was friends with them.

16 Q. I'm going to pull up a photograph.

17 MS. CLARKE: I don't think there's any objection, your
18 Honor. 3246?

19 MR. MELLIN: That's fine, your Honor.

05:17 20 THE COURT: Okay.

21 MS. CLARKE: I'd like to make sure that goes into
22 evidence.

23 (Defense Exhibit No. 3246 received into evidence.)

24 BY MS. CLARKE:

25 Q. Do you recognize that photograph?

1 A. I do.

2 Q. And can you tell the -- you can actually touch the screen
3 and point to people. Can you tell the jury who that is?

4 A. Sure. This is Jahar; this is one of the Silva brothers,
5 one of the twins; and that's me.

6 Q. That's probably not a picture that you want to send around
7 the world.

8 A. No.

9 (Laughter.)

05:17 10 Q. Can you tell us, do you recall the occasion?

11 A. Sure. We were -- I can tell what was happening. I don't
12 remember the specific day.

13 You can see in the background there's some students
14 leaving the classroom, so this is probably after school, class
15 has just ended, and -- I don't remember if I was invited into
16 this photo or if I decided just to jump in and photobomb them,
17 but I was just goofing off and blowing off some steam after
18 school.

19 Q. But you had a good relationship, I take it, with Jahar?

05:18 20 A. Yeah. We had a good relationship.

21 Q. Did you know anything about Jahar's ethnic or religious
22 background?

23 A. I didn't know much about his ethnic background. I knew he
24 spoke Russian, and I knew he was Muslim.

25 Q. How did you know that?

1 A. He and some of the other students occasionally prayed in a
2 classroom near mine.

3 Q. Did you ever hear Jahar talk about American policies
4 overseas or politics?

5 A. No.

6 Q. Did you ever meet his parents?

7 A. No.

8 Q. Were there opportunities at Cambridge Rindge for teachers
9 to meet parents?

05:18 10 A. Yeah. There were two things that happened. These were
11 both freshman year and senior year. It hadn't changed.

12 There's an open house at the start of each semester in
13 which parents can go through the students' classes, and then
14 there's a parent-teacher night where parents can schedule
15 one-on-one sessions to talk with the teachers.

16 Q. And they never came to those?

17 A. They never came to the one-on-one meetings. It's possible
18 they came to one of the open houses but -- the open houses you
19 have all the parents there, and it's not a one-on-one
05:19 20 interaction. You kind of explain the classroom and what
21 happens there, so...

22 Q. Did you know that Jahar had siblings?

23 A. I did not.

24 Q. At some point did Jahar ask you to write a letter of
25 recommendation for him to go to college?

1 A. He did.

2 Q. And what was your reaction when he asked you to do that?

3 A. I was happy to write it for him. I was excited about
4 writing a letter for a student that I had had in my -- like,
5 seeing him as he started school and seeing him at the end of
6 his school is -- it's fun to write a letter like that. It's
7 fun to -- for a student that you get to see both as they enter
8 and finish school.

9 Q. So I'm going to pull that up. It's Exhibit 3247-3.

05:19 10 THE COURT: Is there any objection to this?

11 MR. MELLIN: No, your Honor.

12 THE COURT: Okay.

13 (Defense Exhibit No. 3247-3 received into evidence.)

14 BY MS. CLARKE:

15 Q. Do you recognize this letter?

16 A. I do.

17 Q. And is it the letter of recommendation that you wrote?

18 A. Yes.

19 Q. I'm going to ask you to read it to the jury.

05:20 20 I think that might make it large enough.

21 A. Thank you.

22 Q. Can you see that okay?

23 A. Yeah. I can read that.

24 Q. Would you read it to the jury?

25 A. Sure.

1 "Dear Admissions Officer:

2 "I write with enthusiasm to you in recommendation of
3 Dzhokhar Tsarnaev. I have known Dzhokhar since the start of
4 his freshman year in high school when I was his Algebra I
5 teacher. This fall he has been a student in Honors Advanced
6 Math Topics, an elective which explores a variety of topics in
7 discrete math with a focus on their application in the real
8 world. Dzhokhar is a smart, energetic and friendly student.

9 "Dzhokhar is a good student. He quickly absorbs new ideas
05:21 10 and has a close-to-perfect homework record. He brings a
11 healthy, energetic, competitive spirit to the class. He
12 motivates himself in class with academic competitions of his
13 own devising (such as racing to write down notes or completing
14 a calculation). His tongue-in-cheek contests are taken in good
15 spirit and have a beneficial effect on the attention of not
16 only himself but the classmates he is competing against.

17 "Dzhokhar is amiable with his peers and adults. His good
18 nature and positive spirit have made Dzhokhar a pleasure to
19 know over the past four years. He is always polite and
05:21 20 respectful and enters the classroom with a warm greeting. He
21 is well regarded by his peers and gets along well with everyone
22 in the class. I can rely on him to contribute positively to
23 any permutation of students with whom he is grouped.

24 "Dzhokhar is a strong student with a positive attitude. I
25 enjoy teaching him both as a freshman and as a senior because

1 of his competitive academic drive and positive disposition. It
2 has been a pleasure to have him at our school, and I strongly
3 recommend him to you."

4 Q. You wrote that in December 2010, right?

5 A. That's correct.

6 Q. Were you sincere about everything that you said in that
7 letter of recommendation?

8 A. Absolutely.

9 Q. And do you mean those things even as you sit here today?

05:22 10 A. I do.

11 Q. Where were you when you heard about the Boston Marathon
12 bombing?

13 A. I was in South Africa visiting my brother.

14 Q. And did you have -- can you tell us what your thoughts
15 were when you learned that Jahar Tsarnaev was suspected of
16 being involved in the bombing?

17 MR. MELLIN: Objection.

18 THE COURT: Sustained in that form.

19 BY MS. CLARKE:

05:22 20 Q. What you heard -- when you learned that Jahar Tsarnaev was
21 involved in the bombing, was that consistent with the Jahar
22 Tsarnaev that you knew?

23 A. Not at all. I was shocked when I saw his picture on TV,
24 and then his name was there. In fact, I didn't even believe it
25 was him at first because it just didn't make sense to me, and

1 it took me a while to absorb that it was him and that, you
2 know, I wasn't misunderstanding.

3 Q. Well, now that you know that it was him, what are your
4 thoughts about it?

5 MR. MELLIN: Objection.

6 THE COURT: Sustained.

7 BY MS. CLARKE:

8 Q. Do you have any reflections on --

9 MR. MELLIN: Objection.

05:23 10 BY MS. CLARKE:

11 Q. -- on the fact that you taught Jahar and you now know that
12 he was involved in the bombing?

13 MR. MELLIN: Objection.

14 THE COURT: Sustained.

15 BY MS. CLARKE:

16 Q. Do you think that Jahar had you fooled in high school?

17 MR. MELLIN: Objection.

18 THE WITNESS: No, I don't.

19 MR. MELLIN: Never mind. I'll withdraw it, your

05:23 20 Honor.

21 (Laughter.)

22 MS. CLARKE: And I thank you.

23 THE COURT: The answer can stand.

24 MS. CLARKE: Thank you very much. The prosecutor may
25 have some questions.

CROSS-EXAMINATION

BY MR. MELLIN:

Q. Mr. Traub, you would agree that the defendant was self-motivated, correct?

A. As a student?

Q. Yes.

A. Yes.

Q. From your -- you're testifying about your experiences with him, right?

A. Yeah.

Q. And you wrote that he motivates himself, right?

A. Yes.

Q. So he's self-motivated, correct?

A. He was self-motivated in the classroom.

Q. Good. He was mature?

A. Yeah, he was mature for a high school kid.

Q. And he was smart, correct?

A. He was smart.

Q. Thank you.

THE COURT: Anything else?

All right. Mr. Traub, thank you. You may step down.

(The witness is excused.)

MS. CONRAD: Defense calls Kevin Roche.

KEVIN ROCHE, duly sworn

THE CLERK: State your name. Spell your first and

1 last name for the record, keep your voice up, and speak into
2 the mic, if you would.

3 THE WITNESS: My name is Kevin Michael Roche. Last
4 name is R-O-C-H-E.

5 DIRECT EXAMINATION

6 BY MS. CONRAD:

7 Q. Good afternoon, Mr. Roche.

8 A. Good afternoon, Counselor.

9 Q. Mr. Roche, where do you work?

05:25 10 A. For the United States Marshal Service.

11 Q. What's your position?

12 A. I'm a deputy U.S. marshal.

13 Q. And how long have you worked for the Marshal's Service?

14 A. For 17 years.

15 Q. And has that always been in Boston?

16 A. Yes, ma'am.

17 Q. And is that your current assignment?

18 A. Yes.

19 Q. And were you working as a U.S. marshal back on April 19th,
05:26 20 2013, when Jahar Tsarnaev was arrested?

21 April 20th. Excuse me.

22 A. What was the date again?

23 Q. April 20th, 2013.

24 A. That was the Friday?

25 Q. Friday was the 19th. 20th was Saturday.

1 A. I was not working Saturday, no.

2 Q. Okay. Did you encounter Mr. Tsarnaev shortly after he was
3 taken into federal custody?

4 A. Yes, ma'am.

5 Q. And where did that occur?

6 A. At the Beth Israel Hospital on Sunday. I think that was
7 the 21st.

8 Q. And do you see Mr. Tsarnaev in the courtroom?

9 A. I do.

05:26 10 Q. From the time of his arrest to, let's say, the date of his
11 first appearance in this courthouse on July 10, 2013, how many
12 times did you personally interact with Mr. Tsarnaev?

13 A. Prior to the arraignment? I would say half dozen
14 probably.

15 Q. And tell us what your role was and how you came to
16 interact with him.

17 A. On the Sunday after his apprehension, the clerk
18 magistrate -- I mean the judge magistrate, Marianne Bowler,
19 came to the hospital to give him his initial appearance in the
05:27 20 hospital. And from that point on, he became a Marshal's
21 Service in-custody detainee. He remained at the hospital that
22 day, and we had a detail on him while he was at the hospital
23 until the time of his discharge.

24 Q. And could you explain what you mean by "a detail"?

25 A. There were maybe six of us that were inside the actual

1 wing that he was being treated in, and then there was other law
2 enforcement throughout the hospital for security purposes. But
3 we stayed with him the entire time he was in the hospital.

4 Q. And you were part of that detail?

5 A. Yes, ma'am.

6 Q. And was Deputy U.S. Marshal Gary Oliveira also part of
7 that detail?

8 A. Not the day that I was there. I did a 12-hour shift from
9 the Sunday that he was -- he had his initial appearance until
05:28 10 Monday morning. I'm sure that he did. I think everyone in the
11 district did at some point.

12 Q. At some point was Mr. Tsarnaev transferred to the Federal
13 Medical Center at Devens?

14 A. He was.

15 Q. And that was -- again, he was still in federal custody?

16 A. Correct.

17 Q. And after his transfer out of Beth Israel, did you have
18 interaction with him as part of your duties as a U.S. marshal?

19 MR. MELLIN: Your Honor, objection to this line as
05:28 20 irrelevant.

21 MS. CONRAD: It's foundation, your Honor.

22 MR. MELLIN: There's no question about the foundation.

23 MS. CONRAD: Well, I'll make a proffer at sidebar,
24 your Honor, but --

25 THE COURT: Well -- yeah. Let me see you.

1 (Discussion at sidebar and out of the hearing of the
2 jury:)

3 THE COURT: You seem to be taking a while to get to
4 the point.

5 MS. CONRAD: Well, no. The point is that, in his
6 interactions with him, he was never defiant, hostile or
7 uncooperative. And that's exactly the point. The July 10th
8 event is what the government wants to focus on --

9 MR. WEINREB: Your Honor, two days when he lay in the
05:29 10 bed in Beth Israel, he wrote one defiant note after another.
11 He couldn't be defiant physically. He was physically --

12 MS. CONRAD: I was getting to after he went to Devens.
13 I just had to establish when he first went there. Now we're
14 talking --

15 MR. MELLIN: They're trying to draw these fine lines
16 and --

17 MS. CONRAD: I'm done with Beth Israel.

18 THE COURT: No, no. But it's fair game for them to
19 point out that he was defiant on other occasions.

05:29 20 MS. CONRAD: I'm talking about this --

21 MS. CLARKE: He's not been defiant.

22 MS. CONRAD: He has not been defiant.

23 THE COURT: He just said -- I don't know what the
24 evidence is.

25 MS. CONRAD: He's talking about the interrogation by

1 the FBI the government said they're not offering. I'm talking
2 about his interaction.

3 MR. WEINREB: We're not offering it in our
4 case-in-chief but to cross-examine him to rebut a claim. The
5 defense isn't entitled to put on a one-sided presentation and
6 then keep out evidence that contradicts it. The jury's being
7 misled.

8 MS. CONRAD: First of all --

9 THE COURT: I think it opens the door to evidence of
05:30 10 defiance if they have it. I don't know what it is.

11 MS. CONRAD: I don't know what it is either.

12 THE COURT: But be warned, it opens --

13 MS. CONRAD: Even if it's during the course of an
14 un-Mirandized interrogation, which I think is what they're
15 talking about --

16 THE COURT: I don't know. I'll have to hear what it
17 is.

18 MS. CONRAD: Well, if it's statements by the
19 defendant, we have not been given discovery under Rule
05:30 20 16(a)(1)(A) --

21 MR. WEINREB: They have all the statements.

22 THE COURT: I'm just -- okay. I think you may have to
23 be careful because I think it may open the door to something
24 you don't want. I'm sorry.

25 MS. CONRAD: It would help if the government would

1 tell me what they're talking about because I'm not aware of
2 what they're talking about.

3 MR. WEINREB: We don't need to preview our
4 cross-examination. All the statements the defendant made at
5 Beth Israel were produced to the defense. It's up to the jury
6 to decide if they were defiant statements or not. We happen to
7 believe that many of them were.

8 MS. CONRAD: I do not want to ask whether he was
9 defiant at Beth Israel; I just want to establish when he first
05:31 10 met him and under what circumstances.

11 MR. WEINREB: The question is, was he defiant?

12 MS. CONRAD: That wasn't the question. I'm
13 focusing --

14 THE COURT: If you focus on a particular quality, like
15 defiance, they can meet with a particular quality. A more
16 general focused quality of what his demeanor was might not --

17 MS. CONRAD: Okay.

18 (In open court:)

19 BY MS. CONRAD:

05:32 20 Q. Were there occasions when you escorted Mr. Tsarnaev to
21 medical appointments from Devens?

22 A. Yes. I believe on at least two occasions.

23 Q. And on those occasions, what was his demeanor in his
24 interaction with you?

25 A. On the first time that we took him to a hospital, I

1 believe he was still pretty lethargic. It seemed like he
2 was -- he was pretty fresh from his discharge, and he may have
3 still been medicated.

4 Q. And when you say "fresh from his discharge," did you
5 actually observe physical injuries?

6 A. Yes.

7 Q. And, specifically, did you observe physical injuries to
8 his face?

9 A. I did.

05:33 10 Q. What did you observe?

11 A. He had a wound that appeared to have been sutured, and his
12 head was deformed. I believe it was his left side of his --
13 his head seemed swollen.

14 Q. And did you notice anything about his mouth?

15 A. Not to my recollection, no.

16 Q. Were you aware that he had been shot in the face?

17 A. Yes.

18 I take that back. I'm sorry. I knew he had an upper body
19 wound and a hand wound and a leg wound. I don't know -- I
05:33 20 mean, other than the obvious suture, that was my first
21 indication.

22 Q. And when you escorted him to medical appointments, did you
23 give him instructions?

24 A. I did.

25 Q. And did he follow those instructions?

1 A. He did.

2 Q. And I want to turn your attention to July 10th, 2013. And
3 that was the day that Mr. Tsarnaev first came to this
4 courthouse for his arraignment, correct?

5 A. Yes, ma'am.

6 Q. And did you -- have you seen the video of a gesture he
7 made to the camera in the cellblock?

8 A. I have.

9 Q. Now, you're familiar with the cellblock?

05:34 10 A. Yes.

11 Q. And are you familiar with the camera in the cellblock?

12 A. Yes.

13 Q. And by the way, what was your assignment that day on July
14 10, 2013?

15 A. I was part of the team that moved him from the facility
16 here on that morning, and then -- I don't recall if I actually
17 escorted him to court that day. I believe I did.

18 Q. At some point did you go with a supervisor to speak to him
19 after becoming aware of a gesture that he made to the camera?

05:35 20 A. Yes, ma'am.

21 Q. And what did -- and when you spoke to him -- or your
22 supervisor spoke to him on that occasion, how would you
23 describe his demeanor?

24 A. It was very brief, that discussion we had with him, and
25 his demeanor was -- he basically listened to what we had to

1 say, and he didn't have much to offer.

2 Q. Did he apologize?

3 A. He did.

4 Q. Have you seen other detainees use the housing on that
5 camera as sort of a reflection or a mirror?

6 A. Yes.

7 MR. MELLIN: Objection to "others."

8 THE COURT: No. Overruled. That may stand.

9 BY MS. CONRAD:

05:36 10 Q. And after you spoke with him that day, did you receive any
11 report -- strike that.

12 Was he given any instructions at that time?

13 A. Was he given instructions?

14 Q. Yes. In your presence.

15 A. He was.

16 Q. And did he follow those instructions?

17 A. Well, let me just clarify that.

18 I don't know if we gave him instructions, but we addressed
19 what we had observed and informed him that that was not going
05:36 20 to be tolerated here in this house, and it was going to be
21 dealt with if it continued and asked him if he had any plans to
22 continue that behavior.

23 Q. And what did he say?

24 A. And he had said, "No. I'm done. I'm sorry."

25 Q. And did he engage in any other behavior like that that day

1 in the cellblock?

2 A. Not that day, no.

3 Q. In your experience, what types of things have inmates done
4 in the cellblock?

5 A. You name it. We've seen attempted suicides in our
6 cellblock, inmate-on-inmate assaults. They flood the toilets.
7 You know, they act out verbally, physically to each other.

8 Q. Do they ever act out verbally to you?

9 A. Anyone or him?

05:37 10 Q. Other detainees.

11 A. Yes.

12 Q. And have you ever -- strike that.

13 In terms of the hand gesture, would that normally result
14 in writing up an incident report?

15 A. I would -- it would depend on the detainee. Different
16 inmates rise to a different level of attention from the
17 Marshal's Service in what's considered, you know, important or
18 significant. I can say, in my experience, I've never written a
19 report about a hand gesture.

05:38 20 MS. CONRAD: May I have a moment, please?

21 (Counsel confer off the record.)

22 MS. CONRAD: Thank you very much, Mr. Roche. I don't
23 have any further questions for you at this time.

24 CROSS-EXAMINATION

25 BY MR. MELLIN:

1 Q. Mr. Roche, by the time the defendant came to court in
2 July, he was healing, correct?

3 A. Yes.

4 Q. His face was no longer swollen like you talked about,
5 correct?

6 A. In July?

7 Q. Yes.

8 A. I believe it was still in July.

9 Q. Okay. Did you see his hand gestures that day?

05:39 10 A. Yes, sir.

11 Q. Now, Ms. Conrad just asked you about your experience and
12 what types of things are done, in your experience.

13 Did you ever see him make a peace sign that day?

14 A. In my opinion, no.

15 Q. Did he ever once put his hands up like this during that
16 video and make a peace sign like this?

17 MS. CONRAD: Objection, your Honor. The video speaks
18 for itself.

19 THE COURT: I agree. The video speaks for itself.

05:39 20 BY MR. MELLIN:

21 Q. Did you see that sign?

22 MS. CONRAD: Objection.

23 THE COURT: Sustained.

24 BY MR. MELLIN:

25 Q. What gestures did you see the defendant make, and what

1 gestures were the reasons for why he was talked to that day?

2 THE COURT: That's a multiple question. You can
3 answer the second part of it.

4 THE WITNESS: Can you repeat that? I'm sorry.

5 BY MR. MELLIN:

6 Q. Sure. What gestures were made that required someone -- in
7 this case, you -- to go talk to the defendant?

8 A. I saw a two-fingered sideways gesture and then a middle
9 finger straight up.

05:40 10 Q. In your experience, what did you take the two-finger
11 sideways gesture to mean?

12 MS. CONRAD: Objection.

13 THE COURT: A little foundation.

14 BY MR. MELLIN:

15 Q. Have you seen that gesture before, in your experience?

16 MS. CONRAD: Objection.

17 THE COURT: Overruled.

18 THE WITNESS: Yes.

19 BY MR. MELLIN:

05:40 20 Q. And putting -- considering the context of the time -- the
21 context of what happened after you saw that gesture, what did
22 you take that gesture to mean?

23 MS. CONRAD: Objection.

24 THE COURT: Overruled.

25 THE WITNESS: If I could elaborate?

1 BY MR. MELLIN:

2 Q. Yes.

3 A. I'm purebred Irish, and all four of my grandparents
4 emigrated here from Ireland, so that --

5 MS. CONRAD: Objection.

6 THE COURT: I don't know --

7 MS. CONRAD: I don't think there's any evidence that
8 the defendant is Irish.

9 THE COURT: I'm not sure what this --

05:41 10 MS. CONRAD: May we approach?

11 THE COURT: There's got to be deeper background
12 than --

13 MR. MELLIN: Let me rephrase it.

14 BY MR. MELLIN:

15 Q. The two-finger sideways, did you take that to be a sign of
16 disdain by the defendant, or how did you perceive that gesture?

17 MS. CONRAD: Objection.

18 THE COURT: Again, you can have the second part of the
19 question. How did you perceive it?

05:41 20 THE WITNESS: I perceived it as defiance. The way
21 that I understood it growing up around my family and circle of
22 people, that was it. That was a disrespectful sign.

23 BY MR. MELLIN:

24 Q. And after -- immediately after the defendant uses the
25 two-finger sideways, does he then use the middle finger to send

1 another hand gesture?

2 MS. CONRAD: Objection. The video speaks for itself.

3 THE COURT: Go ahead. You can answer it.

4 THE WITNESS: To me they were one and the same. I
5 mean, they were similar. They meant the same to me.

6 BY MR. MELLIN:

7 Q. After that is when you went to speak to the defendant,
8 correct?

9 A. I did not see him make the sign when he initially made it.

05:42 10 It was told to me from the deputy in charge that he was making
11 obscene gestures in the camera, so at the time that I went in
12 to discuss that with him, I don't even know if I knew what the
13 sign was. I just knew that my colleagues identified them as
14 obscene gestures, and it didn't matter to me what it was.

15 MR. MELLIN: I asked an imprecise question. I --

16 MS. CONRAD: Your Honor, in light of -- if I may. In
17 light of that answer, your Honor, I move to strike the previous
18 testimony about how he interpreted it when he saw it, which
19 wasn't until after the fact.

05:42 20 THE COURT: The motion is denied.

21 BY MR. MELLIN:

22 Q. I asked an imprecise question. I was only trying to
23 indicate that you went to see the defendant after that incident
24 happened, correct?

25 A. That is correct.

1 Q. And at the time that you went to see the defendant, he
2 admitted, in fact, that he had done that, correct?

3 A. He acknowledged -- my reading in his mannerisms, he
4 acknowledged that he -- he knew we were there for a reason, and
5 he did it to a camera, so clearly we saw it, and he apologized
6 for it.

7 Q. And what is it that he said?

8 A. He said -- we asked him if he was going to continue to be
9 a problem, or if he was going to be a problem for the rest of
05:43 10 the day, and he said, "No. I'm done. I'm sorry."

11 Q. And that was -- he said that just after he was confronted
12 and not any time before that, correct?

13 MS. CONRAD: Objection, your Honor.

14 THE COURT: Sustained.

15 BY MR. MELLIN:

16 Q. Did he make that statement voluntarily or when you were
17 questioning him about what happened?

18 MS. CONRAD: Objection, your Honor.

19 THE COURT: Sustained. I think we have the
05:43 20 circumstances.

21 MR. MELLIN: All right. Thank you, your Honor.

22 MS. CONRAD: Nothing further. Thank you.

23 THE COURT: All right, Deputy. Thank you. You may
24 step down.

25 THE WITNESS: Thank you.

1 (The witness is excused.)

2 MR. BRUCK: I call Mark Bezy.

3 MARK BEZY, duly sworn

4 THE CLERK: Please state your name, your first and
5 last name, and spell both for the record, if you would, and
6 keep your voice up.

7 THE WITNESS: My name is Mark Bezy, B-E-Z-Y.

8 DIRECT EXAMINATION

9 BY MR. BRUCK:

05:45 10 Q. Good afternoon, Mr. Bezy.

11 A. Good afternoon.

12 Q. Where do you live?

13 A. I live in San Tan Valley, Arizona.

14 Q. What sort of work have you done for most of your career?

15 A. Corrections.

16 Q. Are you retired as a career employee from the Federal
17 Bureau of Prisons?

18 A. Yes, I am.

19 Q. And what is the Federal Bureau of Prisons?

05:46 20 A. It's the agency that houses offenders that have been
21 convicted in federal courts and sentenced to periods of times
22 of incarceration.

23 Q. How long did you work for the Federal Bureau of Prisons?

24 A. 28 and a half years.

25 Q. From what year to what year?

1 A. Started in 1978, and I retired in 2006.

2 Q. 2006?

3 A. Correct.

4 Q. And what, briefly, do you do now?

5 A. I own a correctional consulting company.

6 Q. And between the time of your retirement and the present
7 day, have you also worked for a private prison corporation?

8 A. Yes. Before I retired, I was recruited by a private
9 correctional company out of Boca Raton, Florida. They hired me
05:46 10 to activate and run a thousand-bed sex offender unit in the
11 state of Arizona; in Florence, Arizona. So I retired and went
12 to work for them, activated it, worked it for a couple of
13 years.

14 Q. In the course of your long career with the Bureau of
15 Prisons and with the consulting work that you have done since,
16 are you familiar with the programs, policies, operation of the
17 Federal Bureau of Prisons?

18 A. Yes, I am.

19 Q. Did we ask you to assist us by providing the Court with
05:47 20 information concerning restrictions on communications by
21 certain federal prisoners?

22 A. Yes.

23 Q. Now, I'd like to ask you a little bit more about your
24 career before we get started.

25 Where did you -- what is your educational background?

1 A. I have a bachelor of science in criminal justice from the
2 University of Nebraska in 1974.

3 Q. And I think you said you started at the BOP, Bureau of
4 Prisons, in 1978?

5 A. Correct.

6 Q. I'm not going to ask you about each of your institutional
7 assignments. There were a great many of them, weren't there?

8 A. Yes.

9 Q. And that's the way careers progress in the Bureau of
05:48 10 Prisons, from -- people who advance go from institution to
11 institution?

12 A. Yes.

13 Q. Acquiring more and more responsibility as they go?

14 A. Correct.

15 Q. And that was the pattern of your career?

16 A. Yes.

17 Q. All right. What types of institutions did you serve at as
18 you advanced through the Bureau of Prisons?

19 A. I started in 1978 at the Federal Correctional Institute in
05:48 20 Oxford, Wisconsin. It was a medium-security adult male
21 facility.

22 Q. And briefly speaking, did you work at a variety of
23 different institutions at different levels of security over the
24 course of your career?

25 A. Yes. I've worked at camps, I worked at low, I worked at

1 mediums, I worked at United States penitentiaries, and I've
2 worked at federal medical centers.

3 Q. And have you also had occasion to work at various
4 headquarters for the Bureau of Prisons in different parts of
5 the country?

6 A. I worked in two regional offices, yes.

7 Q. Okay. Which administer prisons for large swathes of the
8 country?

9 A. Yes. For the institutions within that region, we manage
05:49 10 them.

11 Q. Would you tell us what the last three or four assignments
12 that you had during the course of your career were?

13 A. Last three or four?

14 Q. Yeah.

15 A. It would have been -- I was appointed to the captain of
16 the United States Penitentiary in Marion, Illinois -- if I can
17 look at my dates, that's...

18 Q. Sure.

19 A. -- in 1992 to 1995, and at that time Marion was the most
05:49 20 restricted facility and most controlled facility in the Bureau
21 of Prisons.

22 From there I went to the --

23 Q. Let me stop you there.

24 A. Excuse me.

25 Q. How many captains were there at Marion at this

1 high-security prison?

2 A. There's only one captain at every facility.

3 Q. And you were it?

4 A. Yes.

5 Q. And the captain's job is what, in lay terms?

6 A. Well, all the correctional officers report to you; the
7 lieutenants report to you. You have GS-9 lieutenants and GS-11
8 lieutenants, you have a security officer, an armorer, and
9 investigative staff, which is known as the SIS office --
05:50 10 special investigative supervisors -- report to you.

11 Q. Very well.

12 And you say that Marion was at that time the most -- sort
13 of the super max for the entire country?

14 A. Yes.

15 Q. Okay. Where did you go after that?

16 A. After that I was promoted to the correctional service
17 administrator in the North Central Regional Office in Kansas
18 City.

19 Q. And during the time you were at Marion and during that
05:50 20 next assignment, did a new maximum-security facility come
21 online for the Bureau of Prisons nationwide?

22 A. Yes. In 1994 the bureau had been building, but they
23 opened the -- what they call the administrative maximum
24 facility at the Florence Correctional Complex in Florence,
25 Colorado.

1 Q. And that's known, for short, as ADX?

2 A. ADX.

3 Q. Did you have any role in selecting the inmates who were
4 transferred from Marion to ADX when it opened?

5 A. Yes. We moved probably 90 percent of our population from
6 Marion to the ADX in small groups. We picked which groups
7 would go first, second, third and fourth.

8 Q. Thank you.

9 And just to move this along, did you also stay involved at
05:51 10 ADX -- in matters involving ADX when you went to the regional
11 headquarters after you left Marion?

12 A. Yes.

13 Q. Okay. And you had responsibilities for helping
14 Marion -- ADX get underway?

15 A. Correct.

16 Q. All right. And what was the next assignment you had?

17 A. I was promoted to the associate warden at the United
18 States Penitentiary in Leavenworth, Kansas.

19 Q. After that?

05:52 20 A. I was promoted to warden at the Federal Correctional
21 Institution at Elton, Ohio.

22 Q. And after that?

23 A. I was promoted to warden at the United States Penitentiary
24 in Terre Haute, Indiana.

25 Q. And was that your final assignment before you retired?

1 A. Yes.

2 Q. Did your -- was there any unusual feature of the
3 institution -- of the Terre Haute institution for which you
4 were responsible as warden?

5 A. Terre Haute already had an existing penitentiary on our
6 property. It was a 70-year-old facility. It was becoming
7 outdated. They were building and had built a brand-new
8 state-of-the-art penitentiary on the compound, so when I
9 arrived -- the current warden finished out his time as running
05:53 10 the old penitentiary. He retired. Then I became the complex
11 warden where I was over the new federal penitentiary, the
12 federal correctional institution, and the federal prison camp.

13 Q. Is Terre Haute also the location -- or was it when you
14 were there -- is it still today the location for the federal
15 death row?

16 A. Yes.

17 Q. So you were the warden for death row as well as for the
18 larger penitentiary?

19 A. Yes.

05:53 20 Q. Is there a specific procedure in the federal regulations
21 that govern the Bureau of Prisons for ensuring the control,
22 limitation or restriction on prisoners whom the government
23 believes present a threat through inciting or communicating
24 with other persons?

25 A. Yes, there is.

1 Q. Do you know offhand what the name of that regulation is?

2 A. It's special administrative measures. It's called --
3 commonly known as SAMs.

4 Q. Okay. And I don't know if it's that important, but do you
5 know the citation for it?

6 A. It's 28 C.F.R. 501.3.

7 Q. Okay. That's Volume 28 of the Code of Federal
8 Regulations, Chapter 501.3?

9 A. Correct.

05:54 10 Q. And that concerns something called special administrative
11 measures?

12 A. Yes.

13 Q. And just to summarize -- we'll get into the details in a
14 moment, but just to summarize, what are special administrative
15 measures?

16 A. It's a mechanism to cut off an inmate's communication with
17 the outside world, but there are few exceptions which are
18 limited, restricted and approved by the FBI, the U.S.
19 Attorney's Office.

05:55 20 Q. Is this procedure, the special administrative measures, or
21 SAMs, frequently used for prisoners who are convicted of
22 terrorist offenses?

23 A. Yes.

24 Q. Is it used for prisoners pretrial as well as after
25 conviction?

1 A. Yes.

2 Q. And was the process of applying special administrative
3 measures invoked in this case for Jahar Tsarnaev?

4 A. Yes, they were.

5 Q. Is he currently under special administrative measures?

6 A. Yes.

7 Q. Now, in summary, what does it mean so far as ensuring the
8 prisoner's communication with the outside world is restricted
9 or limited? What sorts of communications are we talking about?

05:55 10 A. We're talking about his written communication, his
11 visitation, his correspondence, contact with the media, and
12 contact with other inmates.

13 Q. Now, before we get into the details of that, can you
14 describe, generally speaking, the procedure for deciding who --
15 when an inmate is subject to these restrictions under the SAMs?
16 Who decides?

17 A. It's the FBI -- the U.S. Attorney's Office make a
18 recommendation to the attorney general of the United States,
19 and he's the approving official.

05:56 20 Q. All right. And I assume that there are several levels up
21 the bureaucracy that this recommendation travels through. Is
22 that correct?

23 A. Correct.

24 Q. Without going into all of that, when you say "the FBI,"
25 you mean the investigating agency on a given case?

1 A. Yes.

2 Q. Which in this case would be the FBI here in Boston?

3 A. Correct.

4 Q. And you referred to the U.S. Attorney's Office?

5 A. Yes.

6 Q. You mean by that the prosecuting agency in the case?

7 A. Yes.

8 Q. By which you mean the U.S. Attorney right here in Boston?

9 A. Correct.

05:57 10 Q. And those agencies make a recommendation which has to be
11 approved by the attorney general?

12 A. Yes.

13 Q. And if it is, what happens?

14 A. If it is, then he's not allowed to have contact with the
15 media or from the media; he's not allowed to have contact with
16 any other inmates; his visitations are limited to immediate
17 family, which consists of --

18 Q. We'll be getting into the details of that, but I guess my
19 question was: The attorney general approves that SAMs are
05:57 20 invoked, correct?

21 A. Correct.

22 Q. And when a -- now, the attorney general is the head of
23 what agency?

24 A. Department of Justice.

25 Q. And what agency is the Bureau of Prisons a part of?

1 A. The Department of Justice.

2 Q. And what agency is the U.S. Attorney's Office part of?

3 A. The Department of Justice.

4 Q. And the FBI?

5 A. Department of Justice.

6 Q. Okay. So this whole procedure is internal to the
7 prosecution, the FBI, the Justice Department?

8 A. Yes, it is.

9 Q. All right. When the SAMs is invoked, when an inmate is
05:58 10 subject to the special administrative measures, how long does
11 this order last, maximum?

12 A. They're good for one year, and then they're up for
13 renewal.

14 Q. Is there any -- and -- so the SAMs can be renewed after
15 one year?

16 A. Yes.

17 Q. And in this case involving Jahar Tsarnaev, have the SAMs
18 already been renewed?

19 A. Yes, it has.

05:58 20 Q. All right. Is there any limitation to the number of years
21 that this special administrative measures procedure can be
22 renewed?

23 A. No, there's not.

24 Q. Now, when the special administrative measures are invoked
25 and a prisoner is tried and convicted and sentenced to the

1 Bureau of Prisons, does the bureau have a particular
2 institution designed to house such prisoners and to implement
3 these procedures?

4 A. Yes. It's the administrative maximum, the ADX in
5 Colorado.

6 Q. The institution to which you referred a moment ago?

7 MR. BRUCK: Can we bring up 3253, please?

8 And we offer this.

9 THE COURT: Any objection?

05:59 10 BY MR. BRUCK:

11 Q. Do you see that photograph on the screen?

12 A. Yes, I do.

13 Q. Is that a photograph of the --

14 THE COURT: Just a minute, Mr. Bruck.

15 I take it there's no objection because I think we
16 dealt with this earlier.

17 MR. MELLIN: No objection, your Honor.

18 THE COURT: Okay.

19 (Defense Exhibit No. 3253 received into evidence.)

06:00 20 BY MR. BRUCK:

21 Q. And is this a picture of the Florence, Colorado, prison
22 complex?

23 A. Yes, it is.

24 Q. And is ADX, the administrative maximum, one of these
25 prisons?

1 A. Yes.

2 Q. I'm going to enlarge this area.

3 Is that ADX?

4 A. Yes, it is.

5 Q. And a view from the other side --

6 MR. BRUCK: 3254, please.

7 BY MR. BRUCK:

8 Q. Is that an aerial view from the other side of ADX?

9 A. Yes, it is.

06:01 10 Q. All right. That's what it looks like today?

11 A. Yes.

12 Q. By the way, when was the last time you visited ADX?

13 A. I was out there on the 7th of last month.

14 Q. Okay. You've been there recently?

15 A. Yes.

16 Q. You know what it looks like?

17 A. Yes.

18 Q. Now, are prisoners under SAMs -- do you know whether -- I
19 think you've said that prisoners under -- that this institution
06:01 20 is designed to accommodate prisoners who are under the SAMs.

21 Why are prisoners that are under special administrative
22 measures assigned to ADX rather than some other institution in
23 the Bureau of Prisons?

24 A. It's been deemed as the most appropriate institution to
25 house inmates under SAMs.

1 Q. Is there a particular unit or cellblock at ADX that is
2 used to house these types of prisoners?

3 A. Yes. It's called H unit. It's a special security unit.

4 Q. Special security unit?

5 A. Yes.

6 Q. Or H?

7 A. H unit, yes.

8 Q. H unit? All right. And why would the bureau need a
9 special institution in a specific location for this group of
06:02 10 inmates?

11 A. Well, all these inmates are under SAMs. It's been
12 activated since, I believe, 2002. The policies and procedures
13 there are effective, and it works.

14 Q. All right. I'd like to go through the various types of
15 communication or potential for communication that you listed
16 and get you just to describe what the limitations are that
17 are -- that result from the SAMs in each instance.

18 Are there restrictions on inmates' use of the telephone?

19 A. Yes, there are.

06:03 20 Q. What are those restrictions?

21 A. Inmates will get one 15-minute phone call. It's got to be
22 to -- what they call a member of the immediate family, which
23 has been defined as parent, sibling, spouse or children, and
24 they all have to be further approved by the FBI.

25 Q. The people with whom they're allowed to speak have to be

1 approved?

2 A. By the FBI too.

3 Q. When a phone call is made, what restrictions or what
4 precautions are taken to ensure that nothing untoward is -- no
5 information that is untoward is passed in either direction?

6 A. The call is recorded, and it's live-monitored by both an
7 agent from the FBI and somebody from the Federal Bureau of
8 Prisons.

9 Q. Is there an absolute right to make phone calls to members
06:04 10 of your immediate family?

11 A. No.

12 Q. Can a member of the immediate family be -- can an inmate
13 be refused the right, if it is deemed appropriate, to speak
14 with any member of their family?

15 A. Yes.

16 Q. Now, you say phone calls last 15 minutes?

17 A. Correct.

18 Q. And do you know what the maximum number of phone calls a
19 month that can be allowed is under the SAMs?

06:04 20 A. Under the SAMs, if they're in H unit, it's two. Here it's
21 one.

22 Q. And can that number be increased greater than two
23 depending on the level that someone is in?

24 A. Yeah. That's Phase Level 1. Phase Level 2, it would be
25 3; and then Phase Level -- or -- excuse me -- 2 is three, and

1 Phase Level 3 is four.

2 Q. Very well.

3 Are there also restrictions on physical visits?

4 A. Yes.

5 Q. Can you tell us, generally speaking, what those
6 restrictions are?

7 First of all, who is allowed to visit an inmate?

8 A. It's immediate family.

9 Q. "Immediate family" means who?

06:05 10 A. Parents, siblings, children and spouses.

11 Q. So if an inmate is unmarried --

12 A. They don't, yes.

13 Q. -- and has no children, then it would be siblings and
14 parents?

15 A. Correct.

16 Q. What about friends?

17 A. No.

18 Q. If a person had friends who wanted to visit him from the
19 outside, that's not included?

06:05 20 A. No.

21 Q. What are the conditions under which the physical
22 visitation occurs for inmates at H unit?

23 A. They're noncontact visits.

24 Q. What's that mean?

25 A. There's a physical barrier between the visitor and the

1 inmate. It's usually security glass. The inmate is locked
2 into a booth on one side. On the other side, the visitor would
3 sit. Each one would have a phone. They would pick up the
4 phone, and they would do -- they would conduct the visit that
5 way.

6 Q. And how many visitors can be in the booth at a time?

7 A. One.

8 Q. The -- what contact is allowed with the news media for an
9 inmate who is under a SAMs?

06:06 10 A. None.

11 Q. None?

12 A. None.

13 Q. What contact is allowed with the news media who wishes to
14 speak to an inmate who is under a SAMs?

15 A. None.

16 Q. What about mail? Are inmates under SAMs allowed to
17 correspond, and if so, with whom and under what conditions?

18 A. Again, it's to immediate family. All outgoing mail is
19 photocopied. It's read by the FBI, Bureau of Prisons. If it's
06:07 20 deemed appropriate, then it's sealed and mailed. Incoming
21 is -- again, it's opened, checked for contraband. It's read by
22 FBI Bureau of Prisons, it's analyzed, and then, if there's no
23 issues, then it will be delivered to the inmate.

24 Q. Who is allowed to correspond with the inmate?

25 A. Immediate family.

1 Q. Same restrictions as with visitation?

2 A. Yes.

3 Q. And with telephone?

4 A. Yes.

5 Q. And as with telephone and visitation, is there any legal
6 requirement that any particular immediate family member be
7 allowed to communicate by mail with the inmate?

8 A. No.

9 Q. So someone could be disapproved even though they are
06:08 10 immediate family?

11 A. Correct.

12 Q. Finally, are there -- you've described H unit. This is
13 a -- is this a self-contained cell block within ADX?

14 A. Yes, it is.

15 Q. Is an inmate -- how are inmates housed within the cell
16 block? Is it multiple cells or single cells?

17 A. It's single cells. Each inmate is assigned to a single
18 cell.

19 Q. And are inmates permitted to mingle or communicate with
06:08 20 other inmates outside of H unit?

21 A. No.

22 Q. Do you know whether there are recording facilities or
23 capabilities to monitor anything that is said by an inmate
24 inside of H unit?

25 A. Yes, there are, but it's law enforcement privilege, I'd

1 like to add to that. But yes, there are.

2 Q. Okay. Without going into the details of how that's
3 done --

4 A. Yes. I -- yeah, I'd prefer to not go into specifics, but
5 there are.

6 Q. I understand.

7 And that monitoring also permits recording of any
8 conversations that inmates may have or attempt to have with
9 each other within the unit?

06:09 10 A. Yes.

11 Q. Do you know how many inmates under SAMs are currently on
12 H unit today?

13 A. As of the 7th of last month, there were 20 -- 27.

14 Q. All right. And do you know how many cells are in the
15 unit?

16 A. There's 34 in the unit. Thirty-four cells.

17 Q. So there are empty cells there now?

18 A. Yes.

19 Q. Now, you've told us that these procedures, the SAMs, can
06:10 20 be renewed annually?

21 A. Yes.

22 Q. Are there some prisoners who may spend many years under
23 these procedures?

24 A. Yes.

25 Q. Are there prisoners still in H unit who have been there

1 since it was created to house SAMs inmates back in 2002?

2 A. Yes, there are.

3 Q. Now, if an inmate is well-behaved, does the Federal Bureau
4 of Prisons have the authority to remove these communications
5 restrictions on its own authority?

6 A. No, they do not.

7 Q. Who has the authority -- sole authority to do that?

8 A. It would be the FBI and the U.S. Attorney's Office.

9 Q. Or --

06:10 10 A. Or attorney general.

11 Q. The attorney general?

12 A. Yeah.

13 Q. Acting on the recommendation?

14 A. Right.

15 Q. And I suppose that leads me to the next question: Does
16 the U.S. Attorney's office and the FBI, who investigate or
17 prosecute a case, have any role in the decision to renew the
18 SAMs?

19 A. Yes, they do.

06:11 20 Q. And that role is what?

21 A. Well, they're asked for recommendations, and then there's
22 a report compiled, and it's sent up to OEO and then up to the
23 attorney general.

24 Q. If the Bureau of Prisons, the FBI or the U.S. Attorney
25 suspect that a prisoner's attempting to defeat the

1 restrictions, to communicate in some way despite these
2 restrictions on communications, what sorts of measures are
3 available to deal with that?

4 A. Well, they can totally take away his telephone privilege,
5 his correspondence privilege and his visitation privilege.

6 Q. When a prisoner is sent to the H unit on ADX under a SAMs,
7 can that -- does the Bureau of Prisons have the power to send
8 him to another institution that would not -- where he would not
9 be subject to the special administrative measures on its own
06:12 10 say-so?

11 A. No, they would not.

12 Q. Do you know how many -- since 2002 -- and that is the time
13 when this procedure was created; is that correct?

14 A. Correct.

15 Q. -- how many life-sentenced terrorist -- offenders
16 convicted of terrorist offenses under the SAMs, excluding
17 prisoners with medical issues, were either designated directly
18 to ADX or ended up there?

19 A. All but one.

06:13 20 Q. And how big a group are we talking about?

21 A. There were 34 total, and 33 went there -- went to the
22 G -- or to the H unit, and one went to a medical center.

23 Q. And one went to a medical center?

24 A. Correct.

25 Q. Presumably because he needed to be there?

1 A. Yes.

2 Q. Do the -- can you give us some examples of -- without
3 naming any names, some of the types of offenses of people who
4 have ended up --

5 MR. MELLIN: Your Honor, objection.

6 THE COURT: Overruled.

7 You may have it.

8 BY MR. BRUCK:

9 Q. Can you list some of the offenses for which people are
06:13 10 convicted and are serving their time under SAMs at H unit?

11 MR. MELLIN: Your Honor, may we approach on that?

12 THE COURT: All right.

13 MR. BRUCK: I'll rephrase the question, your Honor.

14 THE COURT: All right.

15 BY MR. BRUCK:

16 Q. Without naming the specific crimes or the specific
17 offenders, can you give us some sense of the types of offenses
18 for which people have --

19 MR. MELLIN: Objection.

06:14 20 THE COURT: I think I have to see you.

21 (Discussion at sidebar and out of the hearing of the
22 jury:)

23 MR. BRUCK: I'm just trying to bring out these are
24 serious terrorist offenses, and maybe it goes without saying.

25 THE COURT: Well, just so I understand the

1 controversy, let me know what touched the nerve.

2 MR. MELLIN: The attempt to try to do some comparative
3 analysis to bring out the fact that there is people that --

4 MR. WEINREB: In addition, your Honor, I just want to
5 also say that the suggestion may be -- without being
6 intentionally made, may be received by the jury that this is an
7 indication that people who commit these kinds of crimes don't
8 generally get the death penalty.

9 MR. MELLIN: Correct. And, your Honor, while we're
06:15 10 here, Mr. Bruck has now shown the photo of ADX from the sky,
11 trying to make it look like it's on the moon. He has now
12 zoomed in on ADX, and he's talked about the defendant will be
13 in a single cell. I think we have every right to talk about
14 all of the issues we discussed previously. He's trying to --

15 THE COURT: You have got plenty of room on what he has
16 done by sticking to my ruling.

17 (In open court:)

18 BY MR. BRUCK:

19 Q. If the government for some reason decided not to renew the
06:16 20 SAMs as to Mr. Tsarnaev and he were sent to ADX -- or let's say
21 he were sent to ADX, and then at some point in the future the
22 government did not -- chose not to renew the special
23 administrative measures that is currently in effect to restrict
24 his communications, is it likely that he would nevertheless
25 remain at ADX?

1 A. In my opinion, he would remain at the ADX.

2 Q. And why do you say that, based on your knowledge of the
3 rules and regulations of the Federal Bureau of Prisons?

4 A. Well, the Bureau of Prisons has what's called the central
5 inmate monitoring system, which designates inmates in certain
6 categories. Say there's a fight between two inmates, they make
7 them separatees. They can never be in the same institution at
8 the same time. There's also one called special supervision,
9 and that's based upon the nature of the offense that the inmate
06:17 10 is sentenced under. And then there's -- broad publicity is a
11 separate category, and that's because of the inmate's offenses
12 received such wide publicity, basically everybody knows who he
13 is.

14 Q. And so two of those categories would apply in this case?

15 A. He carries those -- he carries those assignments now.

16 Q. Very well. All right. That's all I have to ask you about
17 ADX.

18 I do want to ask you one other thing: Did you review
19 Mr. Tsarnaev's Bureau of Prisons records from the two years
06:17 20 that he has spent in pretrial confinement at the Federal
21 Medical Center at Devens, Massachusetts?

22 MR. MELLIN: Your Honor, objection. May we approach
23 on this point?

24 THE COURT: All right.

25 (Discussion at sidebar and out of the hearing of the

1 jury:)

2 MR. MELLIN: Your Honor, we have zero notice that they
3 were using Mr. Bezy to get into his records for the two years
4 he's been at Devens. In fact, we have zero notice of what
5 Mr. Bezy was going to say, but Mr. Bruck represented to me that
6 he was only going to be talking about his experience in working
7 at BOP, not his former records.

8 MR. BRUCK: We had a very informal conversation in
9 which I asked whether the government needed a written Rule 16
06:18 10 summary, and Mr. Mellin told me if it's the usual thing that
11 Bezy does, which invariably involves reviewing his records --
12 all we're going to ask is the following question: How many
13 disciplinary violations did you find on his Bureau of Prisons
14 institutional record over the two-year period since his arrest
15 on April 19th? And we anticipate the answer would be none.
16 That is the extent of the testimony, simply that he has a clean
17 record of disciplinary violations. It's not a point of
18 contention. Those are the facts. And after Mr. Mellin told me
19 that we didn't need to provide anything, I'm a little taken
06:19 20 aback to be told that we didn't provide enough.

21 MR. MELLIN: No, your Honor. There's two separate
22 issues altogether, and Mr. Bruck should know that. It's one
23 thing to call an expert who has worked at BOP to talk about
24 what the BOP does and the procedures the BOP follows. It's
25 another thing altogether to have someone come in and talk about

1 reviewing records.

2 If we had been told there would be a review of
3 records, we would be able to look at them now, go through them
4 and make sure his answer is correct. I know for a fact that
5 the answer is not correct for at least one instance that
6 Marshal Roche could talk about in which he acted out on a
7 transport from Devens to this courthouse. So I don't believe
8 that is a correct answer.

9 MR. BRUCK: Well, there is no institutional
06:19 10 infractions, but how we --

11 THE COURT: Well, I don't think -- I don't think it's
12 a serious notice problem necessarily. I am concerned about the
13 accuracy of the information, but --

14 MR. BRUCK: We'll leave it alone.

15 THE COURT: Yeah. Okay.

16 (In open court:)

17 MR. BRUCK: Thank you, Mr. Bezy. Please answer any
18 questions the government may have for you.

19 CROSS-EXAMINATION

06:20 20 BY MR. MELLIN:

21 Q. Mr. Bezy, good afternoon.

22 A. Good afternoon.

23 Q. Mr. Bezy, you never actually worked at ADX, correct?

24 A. Correct.

25 Q. The only times you've been to ADX has just been as a

1 walk-through, correct?

2 A. No, I've done a staff assist of the correctional services
3 department as a pre-audit, pre-program review. I've been part
4 of a regional office team that went in and did -- spent a week
5 there doing an institutional character profile of the entire
6 complex. Every time I go out to the -- to the complex and do a
7 staff assist visit to the -- to any of the facility there,
8 we're always required to go visit all of the -- the
9 institutions. As a warden, I did an after-action review of a
06:21 10 -- of a serious incident that occurred at the ADX.

11 So I've been there quite a few times. And, actually, I
12 flew in with the last load of high-security inmates when we
13 shut down Marion. I took them -- I was on the plane with them
14 from Marion to the ADX. I'm quite familiar with the ADX.

15 Q. Right. And when was that that you did this fly-in from
16 Marion into ADX?

17 A. 2005.

18 Q. Okay. Now, there's been changes at the ADX. Wait. That
19 was 2005?

06:22 20 A. I mean -- excuse me -- 1995.

21 Q. Right. There have been changes to the ADX since, using
22 your first number, 2005, correct?

23 A. Correct.

24 Q. Okay. There were changes made certainly since 1995,
25 correct?

1 A. Correct.

2 Q. How many times have you been on the H unit?

3 A. Probably -- the last time I was on it was in, I think,
4 2005.

5 Q. Right. So you haven't been there in ten years, correct?

6 A. I was there just last month.

7 Q. To the H unit?

8 A. H unit, yes.

9 Q. I thought you said the last time you were there was 2005.

06:22 10 A. I toured it last month, on the 7th; I was in the unit.

11 Q. Did you go in and see the cells?

12 A. No, they wouldn't let us go down range because of
13 sensitivity of the unit.

14 Q. Right. So when you say you went into the H unit, what did
15 you go into?

16 A. We went into the entrance. We went into the -- you can
17 stand and see down the ranges. We went outside, saw the
18 recreation yards, and basically that --

19 Q. Right. You were at the control booth in the middle,
06:23 20 correct?

21 A. We went beyond the control booth.

22 Q. And when you say you're looking down the range, that means
23 you're looking down the hallway, but the cells are actually off
24 on the sides, correct?

25 A. Correct.

1 Q. So you couldn't see into any of the cells, correct?

2 A. Correct.

3 Q. You couldn't see who was in what cell or anything like
4 that, right?

5 A. Right. They didn't want us to know that.

6 Q. Now, you talked about the SAMs issues, yet you've never
7 worked at ADX, and I think you just testified that it's your
8 understanding that most of the individuals on SAMs go to the
9 ADX. Is that what you're saying?

06:23 10 A. Under this provision, yes.

11 Q. Right. So then you would not have had any type of work
12 experience in that situation because you were never at ADX,
13 correct?

14 A. Correct.

15 Q. Now, let's talk about the SAMs. You understand, of
16 course, that the SAMs is an established procedure that DOJ must
17 follow, correct?

18 A. Yes.

19 Q. And if it's not followed every single year, it just
06:24 20 lapsed, correct?

21 A. Yes.

22 Q. There are a number of individuals who have been in ADX
23 where their SAMs have lapsed and they are now either in another
24 part of ADX, not in the H unit, or other facilities, correct?

25 A. Correct. But that's not up to the BOP. It's up to the

1 FBI and the U.S. Attorney's Office.

2 Q. Well, then if it's not up to the FBI or the U.S.
3 Attorney's Office, who makes the call on that?

4 A. Whether they're -- they're not renewed?

5 Q. Yes.

6 A. It's not the Bureau of Prisons, no.

7 Q. It's not the local U.S. Attorney's Office either, is it,
8 Mr. Bezy?

9 A. Well, that's -- we were told that differently yesterday.

06:24 10 Q. You believe, as you sit here right now, that the
11 U.S. Attorney's Office makes the call as to whether or not the
12 SAMs will be in place?

13 A. There's a recommendation -- there's a group in Washington
14 that calls down here and talks to the local FBI field office.
15 They talk to the U.S. Attorney's Office. They get -- they get
16 a recommendation. They compile the report. The report, then,
17 is routed through DOJ. It's up to OEO, and then it's sent up
18 to the attorney general.

19 Q. Right. So you know the call's not made by this local
06:25 20 U.S. Attorney's Office, correct?

21 A. The final call, no. But you have input in it, yes.

22 Q. Right. And this U.S. Attorney's Office may think they
23 want to have a SAMs in place, but the Department of Justice
24 overall may make a call and say no, correct?

25 A. It's possible.

1 Q. That's happened repeatedly, correct?

2 A. It's very possible.

3 Q. You agree that if the SAMs is not renewed, it lapses in a
4 year, correct?

5 A. Yes.

6 Q. You would also agree that prisoners file lawsuits
7 attacking their SAMs all the time, correct?

8 MR. BRUCK: Objection to "all the time."

9 THE WITNESS: Correct.

06:26 10 THE COURT: Well, it's a little vague, but that --
11 I'll allow it.

12 BY MR. MELLIN:

13 Q. SAMs can be modified, correct?

14 A. Yes. Not by the -- not by a court, no.

15 Q. Not by a court?

16 A. You're right.

17 Q. What happens?

18 A. The court can make a recommendation, but the -- the court
19 cannot stop -- change a SAMs or end a SAMs.

06:26 20 Q. Right. And the court makes a recommendation to whom?

21 A. To DOJ.

22 Q. Right. So you have the judicial branch making a
23 recommendation to the executive branch, correct?

24 A. Correct.

25 Q. And generally, that is the judicial branch that's

1 overseeing the case making a recommendation to the executive
2 branch that is prosecuting that case, correct?

3 A. Correct.

4 Q. You know in this case there has been a modification of the
5 SAMs already, correct?

6 A. I'm not familiar with that, no.

7 Q. You're not?

8 A. No.

9 Q. Are you familiar whether or not this defendant's attorneys
06:27 10 have already asked to modify the SAMs in this case?

11 MR. BRUCK: Objection.

12 THE COURT: Overruled.

13 You may answer it.

14 THE WITNESS: No.

15 BY MR. MELLIN:

16 Q. You're not aware of that?

17 A. No.

18 Q. And just so the jury is clear, the SAMs program -- what
19 does "SAMs" stand for again?

06:27 20 A. Special administrative measures.

21 Q. Right. That program has been in existence for how long?

22 A. Probably 1993, I believe.

23 Q. Or maybe 1995?

24 A. Possible, yes.

25 Q. So just at 20 years right now, correct?

1 A. Yes.

2 Q. So prior to that, there was no SAMs program that existed,
3 right?

4 A. Correct.

5 Q. And as you sit here today, you can't predict how long
6 there's going to be a SAMs program that exists in the future,
7 correct?

8 MR. BRUCK: Objection.

9 THE COURT: Overruled.

06:27 10 Go ahead. You may answer.

11 THE WITNESS: I'd say it's going to be there for a
12 while, yes.

13 BY MR. MELLIN:

14 Q. And you're not aware that the defense moved to vacate the
15 SAMs in this case?

16 A. No.

17 Q. In spite of the existence of these SAMs or these special
18 measures that are put in place, there have been numbers of
19 violations of the SAMs that are in place, correct?

06:28 20 A. I'm not aware of any, no.

21 Q. You're not aware of any SAMs violations?

22 A. No.

23 Q. Were you not a consultant, if not someone who testified in
24 the Philadelphia case involving Kaboni Savage?

25 A. No, I did not testify in that case.

1 Q. Were you hired as an expert in that case?

2 A. Not in that case, no, I was not.

3 MR. BRUCK: Objection to -- we're going very far
4 afield. And in addition, the question should focus on the
5 H unit about which the witness the has testified.

6 THE COURT: It's still -- still addressing the SAMs.
7 I think that's appropriate.

8 BY MR. MELLIN:

9 Q. Is it your testimony that -- as you sit here today, that
06:28 10 you're unaware that SAMs have been violated?

11 A. I'm unaware of any situations where it has been violated,
12 correct.

13 Q. Are you aware that every year inmates come off SAMs?

14 A. It's possible, yes.

15 Q. Is that a yes or a no? Are you aware of that?

16 A. Every year? I can't say yes or no. I said it's very
17 possible, though.

18 Q. Are you not aware of the information in this case
19 regarding the request concerning SAMs discovery?

06:29 20 A. Yes.

21 Q. Well, then you're aware that there's at least half a dozen
22 every year that come off of SAMs, correct?

23 A. Correct.

24 Q. You would agree that when the SAMs come down, someone
25 who's on the H unit is transferred out, correct?

1 A. When they're removed?

2 Q. Yes.

3 A. Yes.

4 Q. So an inmate who might have been in the H unit because of
5 restrictions on communications, when those come down, they're
6 going to go someplace else, right?

7 A. Yes.

8 Q. And you're aware that there have been times where
9 terrorist inmates who are on SAMs are no longer on SAMs,
06:30 10 correct?

11 A. Correct.

12 Q. And they have been moved out of the H unit, correct?

13 A. Correct.

14 Q. Some have moved into general population at ADX, correct?

15 A. Correct.

16 Q. And just so we're all clear there, that means ADX isn't
17 just this special security unit H unit, but it's a regular
18 penitentiary, correct?

19 A. No, it's not a regular penitentiary.

06:30 20 Q. Well, how would you describe it?

21 A. It's the most restrictive penitentiary in the Bureau of
22 Prisons. It's -- they're single cells. Inmate comes out of
23 his cell, he's in restraints. There's two to three officers
24 escorting him every place he goes. He's single rec'd and
25 single celled, and he's there for a period of time.

1 Q. He's single rec'd at all times when he's at ADX?

2 A. Yes.

3 Q. Even when he's stepping down, he's single rec'd?

4 A. Oh, not -- not in step-down program, no. But in the -- in
5 the first initial phase, he is.

6 Q. I'm talking about -- I thought we were talking about when
7 the SAMs come down and an inmate is now going to be in general
8 population at ADX, they're not going to be single celled
9 necessarily, are they?

06:31 10 A. Yes, if they're going to go to Phase 1 of the ADX program.
11 They're not going to the step-down unit initially. They're
12 going to have to work their way through the program. And
13 there's no guarantee that they'll work their way through.
14 There's a provision in the ADX mission statement that if the
15 inmate has a high notoriety and if his life, his security would
16 be a threat at a less-security -- a less-secure institution,
17 he'll remain at the ADX.

18 Q. And that deals with the security of the inmate, correct?

19 A. Correct.

06:32 20 Q. BOP is stepping in to protect the inmate, correct?

21 A. Correct.

22 Q. I'm talking about in situations where someone has been at
23 ADX -- immediately when someone goes to ADX, they're going to
24 get involved in a step-down process; isn't that right?

25 A. No.

1 Q. No?

2 A. No.

3 Q. There's no step-down process in the H unit?

4 A. There's a step -- in H unit, yes.

5 Q. And there's not a step-down process outside of the H unit?

6 A. Yes, but they have to -- they have to work -- there's
7 Phase 1, Phase 2 and Phase 3. They have to work through the
8 phases.

9 Q. Right.

06:32 10 A. And just because they've worked through the phases and
11 their behavior has been exemplary, that doesn't mean that
12 they're going to move to the next level. Each case is based on
13 individual case, and it's based upon factors involving that
14 inmate.

15 Q. Right. And I'm asking you generally the inmates, what can
16 go from Phase 1 to Phase 2, correct?

17 A. If the -- if the committee deems it appropriate, yes.
18 It's not guaranteed.

19 Q. Of course it's not guaranteed, but the whole idea of this
06:33 20 is that you want to have these individuals step down to less
21 restrictive situations, correct?

22 A. Correct. That's the goal, but the goal is not always met.
23 There are inmates that have been there since 1994, and they
24 will -- they'll be there forever.

25 Q. That have been at ADX since 1994?

1 A. Yes.

2 Q. When did you move the inmates from Marion to --

3 A. I mean in 1994 -- they've been there since 1994.

4 Q. Okay. I'm asking you about a step-down process that
5 you're well aware of, correct?

6 A. Correct.

7 Q. You were at Marion at the time, correct?

8 A. Correct.

9 Q. You were the one who thought it was a good idea to have
06:33 10 the step-down process go at Marion, right?

11 A. I was the captain. That's all I was. That's a higher pay
12 grade than I was that made the step-down. But there's inmates
13 that came for review -- I was part of that -- that step-down
14 review program -- that came up for review that we never moved
15 beyond Phase 1.

16 Q. That's fine. I'm asking you about the program. The
17 program was something you knew about at Marion, correct?

18 A. Correct.

19 Q. You were the warden, I thought, at Marion?

06:34 20 A. No, I was captain.

21 Q. Just the captain. Where were you the -- no, I'm sorry.
22 You were the warden at Terre Haute, right?

23 A. And Elkton, yes.

24 Q. Okay. And at that time, when you were at Marion, you knew
25 that it was a three-phase step-down process, right?

1 A. Yes.

2 Q. And the reason why you have that is because you want to
3 try to get to a situation where you have less restrictions on
4 these inmates, right?

5 A. Correct.

6 Q. Because it's incredibly costly for the Department of
7 Justice or for BOP to have their individual employees --

8 MR. BRUCK: Objection.

9 THE COURT: No, you may have it.

06:34 10 BY MR. MELLIN:

11 Q. I'll rephrase it.

12 A. Please.

13 Q. What's the purpose of a step-down process?

14 A. It's to work the inmates into a more -- into a less
15 restrictive environment.

16 Q. And why?

17 A. With the eventual goal of them working their way out of,
18 at that time, Marion.

19 Q. And why?

06:35 20 A. Because it's -- it was the goal that some inmates met and
21 some inmates didn't meet.

22 Q. You do it because it requires a higher number of staff to
23 monitor these people that are in --

24 MR. BRUCK: Objection.

25 THE COURT: Sustained. Sustained. That's -- I think

1 the point has been made.

2 BY MR. MELLIN:

3 Q. You put incentives into the program to encourage inmates
4 to step down, correct?

5 A. Correct.

6 Q. You talked about the -- that at one point there were a
7 number of inmates who were on SAMs who had some type of
8 terrorism connection who, even today, are still at the H unit,
9 correct?

06:36 10 A. Correct.

11 Q. H unit was created when?

12 A. 2002.

13 Q. All right. So we're talking about for over 13 years,
14 right?

15 A. Correct.

16 Q. Okay. But the majority of those inmates who were at the
17 H unit in 2002 are no longer on those SAMs restrictions or even
18 at the H unit, correct?

19 A. There's a number that have been moved out, yes.

06:36 20 Q. Right. The majority, correct?

21 A. It's possible, but there's a number that have been moved
22 out.

23 Q. Now, you were the warden at Terre Haute from 2004 to 2006,
24 right?

25 A. Correct.

1 Q. You oversaw the federal death row, right?

2 A. Yes.

3 Q. You're aware that there are violent acts that happen every
4 day at U.S.P., correct?

5 A. Yes.

6 MR. BRUCK: Objection.

7 THE COURT: Sustained. Scope.

8 BY MR. MELLIN:

9 Q. Well, are you aware that inmates communicate with other
06:37 10 inmates?

11 A. In a U.S.P.?

12 Q. Yes.

13 A. Yes, it's an open -- it's an open penitentiary. They work
14 together. We open the cells at six o'clock in the morning; we
15 lock them back down at ten o'clock. From six to ten, they
16 work, they program, they eat in the dining room together, and
17 they recreate, and they watch TV; they play cards. Yes, they
18 communicate.

19 Q. They communicate even at ADX, correct?

06:38 20 A. Yes.

21 Q. Sometimes appropriately; sometimes not appropriately,
22 correct?

23 A. Yes.

24 Q. And some of those communications involve trying to carry
25 out a hit on somebody else, correct?

1 MR. BRUCK: Objection, your Honor. There's no
2 evidence --

3 THE COURT: Yeah, sustained.

4 MR. BRUCK: -- relative to this at all.

5 BY MR. MELLIN:

6 Q. These communications involve violent acts, correct?

7 MR. BRUCK: Same objection.

8 THE COURT: Sustained.

9 BY MR. MELLIN:

06:38 10 Q. You're aware that inmates, even at ADX, have access to
11 books and magazines, correct?

12 A. Yes.

13 MR. BRUCK: Objection.

14 BY MR. MELLIN:

15 Q. They can receive communications, correct?

16 THE COURT: Well, let me just see you.

17 (Discussion at sidebar and out of the hearing of the
18 jury:)

19 MR. BRUCK: Is that as far as you were going with --

06:39 20 THE COURT: I want to -- this is going to stay tight
21 to the SAMs, so if -- the content of the SAMs regulations has
22 been put in issue. If the content -- if the SAMs regulations
23 have a provision regarding this, then I guess it's fair.

24 MR. MELLIN: Well, your Honor, but that's not --

25 THE COURT: I don't want to go to general -- the point

1 is not just general conditions, but we're still -- we're still
2 following the track of the SAMs.

3 MR. MELLIN: But the problem with that is, your Honor,
4 we're only looking at one little part of the process because we
5 had him admit that SAMs are a yearly review. The SAMs might
6 come down. We have every right to ask when it comes down.

7 THE COURT: You can show -- right. You can have
8 evidence of what is opened up, I guess, what
9 possibilities -- what the restrictions of the SAMs are, and if
06:40 10 the restriction isn't there, I guess what is possible. But
11 it's got to be tied to the present terms that are in the SAMs.

12 MR. MELLIN: But that's what I was doing. In the
13 absence of the SAMs, I was asking what --

14 THE COURT: I wasn't --

15 MR. MELLIN: I'm not sure -- I'm not sure I understand
16 the Court's ruling concerning the violent acts, where there are
17 communications between inmates --

18 THE COURT: Well, no. I don't think we have the -- I
19 don't think it's fair game to address the philosophy of the
06:40 20 SAMs or the objectives. We're dealing with the mechanics of
21 the SAMs, and what they preclude and what in their absence is
22 not precluded, that is a -- I guess an otherwise available
23 feature of prison life.

24 MR. WEINREB: It's also their effectiveness, though.
25 I mean, Mr. Bruck's argument is that the defendant will not

1 pose a danger to others going forward because the SAMs will
2 prevent him from communicating in a way that could provoke or
3 encourage or facilitate violence. If the SAMs are in effect to
4 do that, that's something the jurors ought to be aware of.
5 And, in fact, the SAMs are not foolproof. They've been
6 violated, and they have led to violence.

7 MR. BRUCK: We have a list of every documented
8 instance -- we asked for every documented instance of violence
9 on the H unit involving SAMs inmates. We were told we could
06:41 10 only have the last five years. We were given the last five
11 years. They are the most trivial incidents. There are six
12 incidents involving five inmates, and the worst of them
13 involves somebody who is fighting against being force fed. I
14 mean, this is -- if we're going to go there, it's not going to
15 be pretty for the government.

16 MR. MELLIN: No, your Honor. It doesn't need to be
17 pretty for anyone. The point is it needs to be fair, and it's
18 not fair to draw these very fine lines and say, "I'm going to
19 talk about this little thing" when that little thing is
06:42 20 probably going to be gone in five years. And when that little
21 thing is gone in five years, the situation is going to be
22 completely different.

23 THE COURT: I think you've made your point with
24 respect to what happens about the SAMs.

25 MR. WEINREB: Your Honor, we would ask the Court to

1 take judicial notice of the fact that a motion was filed in
2 this case --

3 THE COURT: We can deal with that at some point.

4 MR. WEINREB: -- to vacate the sentence.

5 THE COURT: The document's been published.

6 MR. WEINREB: Yeah. But it's not really what you
7 would normally put a witness on for, so I think --

8 THE COURT: No, no. No, I think -- I think notice can
9 be taken of that.

06:42 10 MR. BRUCK: But it was also denied, and it was -- it
11 was a pretrial SAMs, and --

12 THE COURT: Yeah, we can put the disposition.

13 Mr. Mellin. Time?

14 MR. MELLIN: Quite a bit. More than five minutes.
15 Probably a good time to break. Probably 20 or 30 minutes,
16 maybe.

17 MR. BRUCK: I'd like to let this witness go. I
18 suggest we keep going for another 15 minutes.

19 THE COURT: If that would do it, I'll do that.

06:43 20 MR. MELLIN: I don't believe it's going to do it.
21 That's the problem.

22 THE COURT: I don't know how much more you could have.

23 MR. MELLIN: Well, I have pretty much more about
24 visitation, about communications, about family members,
25 about --

1 MR. WEINREB: This is a very important issue. The
2 jury cares a lot about this. We're not talking about something
3 trivial or collateral. We're talking about maybe the most
4 important thing for them.

5 MR. BRUCK: Well, it looks like Mr. Mellin plans to go
6 into a series of non-SAMs-related incidents at other
7 institutions involving other inmates. Maybe I should make the
8 motion now and you could rule that out rather than spend 20
9 minutes or so on this inmate at Terre Haute or that inmate at
06:43 10 Leavenworth. It's not relevant. We have gone into the SAMs.
11 They've established the SAMs can be withdrawn. That's not open
12 carte blanche to every single incident involving every
13 non-comparable inmate everywhere in the department -- in the
14 Bureau of Prisons.

15 MR. MELLIN: I don't disagree, necessarily, with that,
16 your Honor, but the impression that's being left is that if
17 someone is on the SAMs, no one is going to have contact, and
18 that the world is safe, and that's just not true.

19 MR. WEINREB: Let's deal with the issue of timing for
06:44 20 a minute. The defense chose to put on this very critical
21 witness at the very end of the day to try to examine him to the
22 point where we would have a very limited amount of time to
23 cross-examine him. It had to be done by the end of today.
24 That's just not fair. We had many witnesses today who were not
25 very important. This one's a critical witness.

1 THE COURT: All right. We'll break for the day.

2 (In open court:)

3 THE COURT: Jurors, we're just about at four o'clock.
4 We're going to take the recess for the day and resume tomorrow
5 with the evidence.

6 Again, I caution you against any discussion of the
7 case with yourselves or anybody else, and avoid any news media
8 accounts of the case. Enjoy the rest of the day. We'll see
9 you tomorrow morning.

06:45 10 THE CLERK: All rise for the Court and the jury. The
11 Court will be in recess.

12 (The Court and jury exit the courtroom and the
13 proceedings adjourned at 3:56 p.m.)
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C E R T I F I C A T E

We, Marcia G. Patrisso, RMR, CRR, Cheryl Dahlstrom, RMR, CRR, Official Reporters of the United States District Court, do hereby certify that the foregoing transcript constitutes, to the best of our skill and ability, a true and accurate transcription of our stenotype notes taken in the matter of Criminal Action No. 13-10200-GAO, United States of America v. Dzhokhar Tsarnaev.

/s/ Marcia G. Patrisso
MARCIA G. PATRISSE, RMR, CRR
Official Court Reporter

/s/ Cheryl Dahlstrom
CHERYL DAHLSTROM, RMR, CRR
Official Court Reporter

Date: 5/6/15